JUSTICE OF THE PEACE & LOCAL GOVERNMENT REVIEW

Saturday, December 31, 1955 Vol. CXIX. No. 53

Official & Classified Advertisements, etc.

Official Advertisements (Appointments, Tenders, etc.), 2s. 6d. per line and 3s. 6d. per displayed headline. Classified Advertisements, 24 words 6s. (each additional line 1s. 6d.) Box Number, 1s. extra *Latest time for receipt 2 p.m. Wednesday*

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NOTIFICATION OF VACANCIES ORDER, 1952

The engagement of persons answering these advertisements must be made through a Local Office of the Ministry of Labour or a Scheduled Employment Agency if the applicant is a man aged 18-64 or a woman aged 18-59 inclusive unless he or she, or the employment, is excepted from the provisions of the Notification of Vacancies Order, 1952. *Note :* Barristers, Solicitors, Local Government Officers, who are engaged in a professional, administrative or executive capacity, Police Officers and Social Workers are excepted from the provisions of the Order.

BOROUGH OF LOWESTOFT

APPLICATIONS invited from solicitors for appointment as Assistant Solicitor on the staff of the Town Clerk. Salary within the scale of £725 per annum to £970 per annum according to qualifications, experience and or suitability. Post superannuable and subject to medical examination. Housing accommodation will be made available if required. Applications, giving particulars of qualifications and experience and two references should reach the Town Clerk, Town Hall, Lowestoft, by Monday, January 9, 1956, with a statement as to whether the applicant is to his knowledge related to any member or senior officer of the Council. Canvassing will disqualify. Applications will be entertained from persons awaiting result of the Law Society's Final Examination.

BOROUGH OF ILFORD

JUNIOR Assistant Solicitor required on the staff of the Town Clerk. Salary range £690 × £30—£900 per annum, plus London Weighting. Commencing salary to be determined in the light of qualifications and experience. Appointment permanent, superannuable and subject to medical examination and to the National Scheme of Conditions of Service.

The Council is prepared to provide, if necessary, on a service tenancy, a two-bedroom self-contained flat in the vicinity of the Town Hall.

Applications, on forms obtainable from the Town Clerk, Town Hall, Ilford, Essex, should be submitted by January 21, 1956.

New Advertisement.

BOROUGH OF ALDERSHOT

Appointment of Deputy Town Clerk

APPLICATIONS invited from Solicitors with sound knowledge of local government law and administration.

Salary Scale " A " (£1,018 15*s.* per annum, rising by increments of £52 10*s.* to £1,228 15*s.*). Conditions as set out in recommendations of the J.N.C. for certain Chief and other Officers. Medical examination required.

Applications, stating age, qualifications and experience, and names of three referees, to be sent to me not later than Monday, January 16, 1956.

H. B. SALES,
Town Clerk.

Town Hall,
Aldershot.

WORKSOP BOROUGH COUNCIL

Appointment of Deputy Town Clerk

APPLICATIONS are invited from Solicitors with considerable local government experience for the above appointment.

Salary £1,010, rising by four annual increments of £35 to £1,150.

Applications should be made on a form which will be supplied by the undersigned.

The completed form should be received by the undersigned on or before January 16, 1956.

The undersigned will reach retiring age in 1958.

W. A. WILLIAMS,
Town Clerk.

Town Hall, Worksop, Notts.

DURHAM COUNTY MAGISTRATES' COURTS COMMITTEE

Petty Sessional Division of Darlington County

APPLICATIONS are invited for the appointment of a whole-time male clerical assistant to the Clerk to the Justices. A knowledge of typewriting and shorthand will be an advantage.

The person appointed will be paid in accordance with the General or Higher General Division scale of salaries for Local Authorities Administrative, etc., Services, according to qualifications, namely, £170 per annum at age of 15 rising by annual increments to £400 or £475 per annum at the age of 28 years. Entrants to the Service over 23 years will receive a commencing salary of £320 or £350 as the case may be, rising by annual increments to the maximum above stated.

The appointment will be superannuable and subject to a medical examination.

Applications, in own handwriting, stating age, education and previous employment, with the names of two referees, must reach me within 14 days after the publication of this advertisement.

W. I. WATSON,
Clerk to the Justices.

Lloyds Bank Chambers,
Darlington.

COUNTY BOROUGH OF MIDDLESBROUGH

ASSISTANT Solicitor required for Town Clerk's Department. Salary scale £830 × £35 —£970 per annum. Commencing salary, within this range, of the successful applicant will be dependent on ability and experience.

Application forms (and details) from Town Clerk, to be returned by January 14, 1956.

BOROUGH OF FARNWORTH

Appointment of Town Clerk

APPLICATIONS from Solicitors with a wide knowledge and experience of local government law and administration are invited for the appointment of Town Clerk, shortly to become vacant.

The conditions of service and salary scales recommended by the Joint Negotiating Committee for Town Clerks, etc., will apply to the appointment and the commencing salary will be £1,307 10*s.* per annum, rising by four annual increments of £52 10*s.* to £1,517 10*s.* per annum.

The appointment will be subject to the provisions of the Local Government Superannuation Acts, 1937 to 1953, and to the passing of a medical examination, and will be terminable by three months' notice on either side.

Forms of application may be obtained from me and completed applications, together with the names and addresses of two persons to whom reference may be made, must be forwarded to me so as to be received not later than January 21, 1956.

NORMAN MITCHELL,
Town Clerk.

Town Hall,
Farnworth, Lancs.

COUNTY COUNCIL OF MIDDLESEX

Department of the Clerk of the Council

ASSISTANT Solicitor required. Salary (N.J.C. Assistant Solicitor's Grade) £690 × £30—£900 per annum, plus " London Weighting." Commencing salary of successful candidate, if with two years' or more legal experience since admission, will be £780, plus " Weighting." Appointment subject to medical assessment and prescribed conditions.

Applications, stating age, qualifications, full details of education and experience, and names and addresses of three referees, to be received by me by January 14. (Quote S.18 J.P.) Canvassing disqualifies.

KENNETH GOODACRE,
Clerk of the County Council.

Guildhall, Westminster, S.W.1.

Justice of the Peace
and
LOCAL GOVERNMENT REVIEW

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REPORTS

NOTES OF THE WEEK

Attempted Suicide

Persons convicted of attempting to commit suicide are not often punished, and if they are sent to prison it is usually for no longer than is thought by the court to be necessary for treatment of some sort in their interests. Punishment is hardly the object, although when the offence is due to excessive drinking and involves other people in taking risks to save them, punishment is not inappropriate. As a matter of fact, we believe that unless the attempt is unusually determined or is not the first, the police often refrain from preferring the charge, and hand over the would-be suicide to the care of friends. Even before attempted suicide became triable summarily by consent, magistrates often found ways of avoiding committal for trial.

It was therefore surprising to hear of a case of attempted suicide being dealt with by a sentence of two years' imprisonment. This was *R.* v. *French* (*The Times*, December 13) in which the Court of Criminal Appeal reduced the sentence to one of a month. The prisoner had been summarily convicted of larceny and of attempted suicide, and in view of his record of convictions, including many for drunkenness, was committed to quarter sessions for sentence. The learned recorder passed sentence of two years on each of the two charges, to run consecutively. In giving judgment allowing the appeal against sentence for the attempted suicide, the Lord Chief Justice said it was the first time he had heard of such a sentence for this offence, and he disapproved of the view expressed by the recorder that self-murder was one of the most serious of crimes, and that therefore attempted suicide was a very serious offence indeed. Lord Goddard observed that it was not trivial, but it was not a very serious crime indeed. It was often committed by unbalanced people. To say that suicide was to be regarded as a very serious crime indeed, showed a lack of proportion.

The Offence of Suicide

The Lord Chief Justice observed that whether suicide was a sin or not was not a matter for the courts. He added that it was made a crime at common law to enable the Crown in the old days to obtain forfeiture of the suicide's goods, as anyone who committed suicide was supposed to have committed murder and the Crown could step in and forfeit his goods. It was, therefore, a source of revenue to the Crown.

In the old days to which the Lord Chief Justice referred, the body of the suicide was buried ignominously in a way which would now be regarded as barbarous. To be guilty of suicide, however, a person must have reached years of discretion and have been of sound mind, and coroners' juries have constantly returned verdicts negativing soundness of mind at the time of the act.

Where any person is found *felo de se* by a coroner's jury the coroner must direct that the remains of such person be interred in the churchyard or other burial ground of the parish or place in which the remains of such person might by law or custom be interred if the verdict of *felo de se* had not been found against such person. As to burial in consecrated ground, the Order or Office for the Burial of the Dead is to be said by a minister in holy orders at the burial in consecrated ground of every person buried therein except where the person has died unbaptized, or excommunicated, or has laid violent hands upon himself, being at the time of years of discretion and in his senses (3 *Halsbury* (2nd edn.) 475, 11 *Halsbury* 836).

In Charge of a Car

The driver remains in charge of a motor vehicle until he puts it into the charge of somebody else, *Haines* v. *Roberts* [1953] 1 All E.R. 344; 117 J.P. 123. That is a clear decision, but the question may still have to be decided whether he has or has not transferred the charge of the vehicle to someone else.

In *R.* v. *Short* (*The Times*, December 10) a magistrate had committed the defendant for trial at the Central Criminal Court on a charge of being in charge of a motor car while under the influence of drink to such an extent as to be incapable of exercising proper control of it. The learned magistrate was stated to have done so in order that an authoritative ruling might be given on the question of being " in charge." The evidence showed that the defendant, realizing that he might become unfit to drive, had handed

over his overcoat in the pocket of which was the ignition key, to the secretary of a club, and he was subsequently found in the driving seat in an unfit condition.

The jury found the defendant Guilty and he was fined. The case was tried before the Lord Chief Justice, who said when summing up: " Curiously enough, for a long time there seems to have been abroad the idea that the question of whether or not a man is in charge of a car is a matter of law. It seems to me it is entirely a question of fact. And questions of fact have to be resolved by a jury. Somebody must be in charge of a car when it is on the road unless it has been abandoned altogether."

The importance of this pronouncement is that it clears up the question whether the point is one of fact or of law. It being a question of fact, there may still be cases, however, in which the point will be taken whether there was any evidence to support a finding of fact by the magistrates' court, and upon this a case might be stated. There have been several Scottish cases dealing with the point and the recent English case of *Leach* v. *Evans* [1952] 2 All E.R. 264; 116 J.P. 410, also dealt with it.

A Husband's Attempt to Shield his Wife

Section 113 (4) of the Road Traffic Act, 1930, enacts that where the driver of a vehicle is alleged to be guilty of an offence under that Act the owner of the vehicle shall give such information as he may be required by or on behalf of a chief officer of police as to the identity of the driver.

It appears from the report of a recent case at Carlisle that an owner who was so requested to give information failed to do so because the driver was his wife and he wished to shield her from the consequences of her own misconduct. She was fined £25, with costs, and was disqualified for a year for driving while under the influence of drink. The husband, for failing to give the required information, was granted an absolute discharge and was ordered to pay £4 8*s*. costs. According to the report the chairman of the bench told the husband that he had been rather foolish but that it was quite understandable that he should try to shield his wife. He added that the bench did not look too favourably upon cases of obstructing the police in their investigations.

One can perhaps appreciate the husband's position in such cases, but the fact remains that if it is alleged that a serious offence has been committed the police are bound to pursue their inquiries to try to ascertain who was responsible. Any failure by the owner of the vehicle to give the necessary information is bound to add considerably to the time taken by the police in ascertaining the facts, and the owner is fortunate in finding a bench prepared to take such a sympathetic view of his case and to impose no penalty for his offence. Section 113 (4) is clear in its requirements, and the owner who fails to comply has no defence unless he can satisfy the court that he did not know and he could not with reasonable diligence have ascertained who the driver was.

Hints for the Chancellor. (2) Civil Defence

We have mentioned previously some peculiar complications of the children's service; in this note we consider the financial tangle of the civil defence services. Local authorities believe that Whitehall control, already complicated by the number of ministries concerned with civil defence, is made more confusing and extravagant of manpower by the extraordinary financial system which has been invented. This system requires that each individual item of expenditure, except in so far as it may be covered by general authority of some circular, must secure departmental approval before any payments can rank for grant. The wording of reg. 3 (*a*) of the Civil Defence (Grant) Regulations, 1953, is: " Grants shall not be payable towards the following expenses, namely: (*a*) any expenses which are incurred without the prior approval of the designated Minister, unless they are expenses either of a class in respect of which, or incurred in circumstances in which, the designated Minister dispenses with the requirement of prior approval," and the memorandum explanatory of the regulations says: " The effect of reg. 3 . . . is that grants under these regulations will be payable only towards expenditure approved by the Minister concerned . . . For the purposes of paragraph (*a*) of the regulation:

(i) expenditure incurred under general authority conferred by departmental circulars (within the limits specified therein) will be regarded as of a class in respect of which the Minister has dispensed with the requirement of prior approval;

(ii) subject to the observance of any general limitations and conditions that have been, or may be, laid down, prior approval will not be necessary for expenditure on normal maintenance and repair of buildings, vehicles, clothing and equipment;

(iii) in all other cases prior approval must be obtained."

The objection to this most peculiar arrangement is that unless local officers are fully acquainted with the contents of all circulars that have been issued they can never be sure that expenditure they authorize will rank for the appropriate grant. As in the last seven years circulars have flowed out steadily, and now number close on 300, the waste of time involved is obvious, particularly accentuated by the detailed control to which they have to submit. At one time, for example, it was thought necessary to issue a circular dispensing with the need to obtain prior approval to the purchase of ink for stamping sets—by comparison it is only necessary to imagine the chaos which would overwhelm the education service if new exercise books or ink pots could not be bought without Ministry sanction or what would happen to road maintenance if engineers and surveyors had to get central approval for each new batch of shovels.

We suggest that much work could be eliminated and man-power reduced if this obstructive and useless tangle were swept away, instructions being given that grants for civil defence expenditure must be paid on the basis applicable to the big main services where, having agreed the outline scheme, the local authority is trusted to work out the details subject of course to audit and inspection—which in any case apply equally to civil defence as to other services.

From time to time reports come to hand of the good work of the government O. & M. officers: we should like to know if they are satisfied with the lack of liaison between government departments on such important matters as the regulations controlling grants to local authorities. Or do they perhaps limit their inquiries and advice to the mechanics of office administration, such as the best way to seal and stamp envelopes? If they do (and we are not at all belittling the importance of this work) the Chancellor might well extend their jurisdiction to work of a different kind in which the education of some ministries into the ways of more enlightened colleagues would play an important part.

Centenary of Pretoria

Prominence has been given in the daily press to the centenary celebrations of the city of Pretoria in the Union of South Africa through a message from Sir Winston Churchill offering his congratulations and referring to the " hospitality "

he received there when taken prisoner during the South African war. In a centenary volume published by the city council, reference is made to the development of the city during the past 100 years. The founder was Andries Wilhelmus Jacobus Pretorius, who became the first president of the South African republic. The volume, which is profusely illustrated, contains a photograph of "the then *Morning Post* correspondent, William Spencer Churchill," standing with some of his fellow prisoners after his captivity on November 18, 1899, and on the same page there is another photograph taken of him recently.

The history of local government in Pretoria goes back to 1857, but the first election of municipal councillors did not take place until 1881. On the outbreak of the first South African war, democratic local government was suspended. Local government seems to have developed slowly mainly, it would seem, because the citizens were averse to paying municipal rates (to quote from the municipal handbook) as long as the Government were prepared to meet expenditure on projects usually financed from rates. The water supply was unsatisfactory. Epidemics and infectious diseases, notably smallpox, were attributed to this fact. Health and sanitary conditions became progressively worse and the citizens held periodical meetings to protest against the position. Meanwhile the Government had granted private concessions for the provision of water, electricity, a market and a public transport service. Agitation by a section of the ratepayers eventually led to the appointment of a temporary town council in 1897 consisting of 15 persons, 11 of whom were elected and four were government officials. A town clerk was then appointed for the first time. Formerly, the town had been administered by a nominee of the Government called the *landdrost* and he continued to exercise his authority concurrently with the temporary council. The friction which existed culminated in the council requesting the Government to take steps for the establishment of a proper municipal council. This was ultimately approved and the first mayor was appointed in 1898 and generally known as burgomaster. He did not serve his full term of office, for on June 5, 1900, he carried out the instructions of his Government and surrendered the town to Lord Roberts. One of the first things the British military authorities did was to appoint a fresh burgomaster. A few changes followed, and in 1903 the first municipal elections under the local government system as it is known today were held, after which the town council elected a mayor. In 1931, Pretoria elected its first woman mayor, who later became one of the Union's first woman members of Parliament.

Gradually, great progress was made in municipal affairs and all the concessions, except the market, were bought by the municipality. At the last census the city had a population of 242,000, of which only 132,000 were classed as "Europeans," there being over 100,000 natives and small numbers of Asiatics and Cape coloured. The present city hall was built in 1935. The illustrations in the centenary volume include photographs of a State banquet in the hall attended by their Majesties King George VI and Queen Elizabeth with Princess Elizabeth and Princess Margaret on their visit to South Africa in 1947.

STEALING THE CONTENTS OF GAS AND ELECTRICITY METERS

[CONTRIBUTED]

The recent decision of the Queen's Bench Division on October 19, 1955 (referred to at p. 695), allowing with costs a police appeal against the decision of the magistrates at East Powder, St. Austell, Cornwall, regarding the ownership of the contents of an electricity prepayment meter, constitutes a valuable statement on the law of larceny in this type of case. The facts of the case were simple. A Mr. Marsh was the consumer of electricity supplied by the South Western Electricity Board. The board let a prepayment or slot meter on hire to Mr. Marsh, and this was installed by the board on his premises. The meter was the board's property and when Mr. Marsh required a supply of electricity he inserted an appropriate coin therein. The cash contained in the meter was kept locked and the board had the custody of the keys. The Case Stated by the magistrates to the Divisional Court was that they found Mr. Marsh had forced the padlock on the meter and extracted therefrom a number of coins previously inserted. It was alleged that Mr. Marsh continued to insert coins in the meter whenever he required a supply of electricity, taking them out as fast as he put them in. On January 27, 1955, there was only 8*s.* in the meter, whereas £20 16*s.* 9*d.* worth of electricity had been used since the meter was last emptied. Mr. Marsh contended that the coins which he placed in the meter did not thereupon become the property of the South Western Electricity Board, and that his only obligation was to pay eventually for the quantity of electricity consumed as recorded by the meter.

The Lord Chief Justice, Lord Goddard, remitting the case to the magistrates with an intimation that the case was proved, said: "When money is put into these meters it becomes the property of the electricity authority. I really cannot understand how the justices came to the decision they did. It was a simple case of a man breaking open a meter and taking out money put in by himself or his wife for electricity. If a person could put shillings in a meter, break it open later and say: 'This has all along been my money,' the electricity board would have no protection."

The decision in this case is in line with the earlier case of *Edmundson* v. *Longton Corporation* (1902) T.L.R. 15, in which it was decided that, by putting money into a meter, ownership of the coins had passed to the respondents who could not therefore recover their value again from the consumer where the money had been stolen through no fault on the part of the consumer. Thus it appears now to be established that, where a prepayment or slot meter is the property of the undertakers, a consumer by placing coins in the slot thereby, in effect, transfers both ownership and possession of the coins to the electricity or gas board. Only employees of these boards have legal access to coins inserted in such a meter in payment for the electricity or gas consumed. If the coins in the meter or both the coins and the meter are stolen, the consumer will be liable for the loss sustained by the undertakers if the theft was caused as a result of the act or neglect of the consumer. For example, if the consumer left the premises where the meter was fixed unoccupied, and open or unlocked, so that access could be obtained thereto by unauthorized persons, this would amount to *prima facie* evidence of negligence. Where the consumer breaks open the coin box and steals the coins he is of course liable to the undertakers for the money so stolen.

He will not, however, be liable for such loss if the coins are proved to have been stolen, without the knowledge or connivance of the consumer, by a member of the consumer's family or some other person lawfully present on the premises, such as a lodger or visitor. Similarly, the consumer is only liable for the loss of the meter and/or its contents caused by a fire on his premises when the fire originated as a result of his negligence.

The foregoing represents a summary of the position at common law. In practice, however, the undertakers invariably insert a provision in the agreement for the supply of gas or electricity which specifically defines the consumer's liability for loss or damage in respect of meters or their contents, and increases his common law liabilities.

In addition, however, to the case where coins are removed from a prepayment meter by a consumer on his own admission, it frequently happens that quantities of electricity or gas are obtained by inserting washers, discs, or filed coins in the meter. In such a case, when the existence of artificial means has been proved, although para. 29 (3) of sch. 3 to the Gas Act, 1948, and s. 38 of the Gasworks Clauses Act, 1871 (which is incorporated with the Electric Lighting Act, 1882, by s. 12 thereof), put the onus of proof that gas or electricity were not "fraudulently abstracted" on to the defendant, it may still be necessary for the prosecution to satisfy the court that a supply of gas or electricity was fraudulently obtained.

Paragraph 29 of sch. 3 to the Gas Act, 1948, substantially reproduces s. 38 of the Gasworks Clauses Act, 1871, and although both Acts in referring to other offences apply the words "wilfully" and "by culpable negligence" as alternatives to "fraudulently," in relation to the abstraction of gas or electricity, they permit of no alternative and limit the offence by the word "fraudulently." It is therefore necessary to consider the true meaning of the word "fraudulently" as used in the above Acts. Mr. Justice Wills in the case of *Re Watson* (1888) 21 Q.B.D. 301, at p. 309, said: "Fraud in my opinion is a term that should be reserved for something dishonest and morally wrong, and much mischief is, I think, done, as well as much unnecessary pain inflicted by its use, where 'illegality' and 'illegal' are the really appropriate expressions." The distinction in the Acts between "wilfully" and "by culpable negligence" on the one hand and "fraudulently" on the other is significant in that fraudulent abstraction involves some element or state of mind more serious than a merely wilful act or culpable negligence. In the case of *R.* v. *Hignett* (1950) 94 S.J. 149 (C.C.A.), it was held that to convict a prisoner of "fraudulent" conversion he must be found to have had a "fraudulent intent." Section 10 of the Larceny Act, 1916 (reproducing s. 23 of the Electric Lighting Act, 1882), also uses exactly the same words "fraudulently abstracts" in relation to electricity, and describes the fraudulent abstraction of electricity as a felony punishable as simple larceny.

It therefore appears that the abstraction of both gas and electricity by artificial means must be accompanied by an intent to defraud—the fraudulent intent of a dishonest mind. The judgment of Lord Goddard in the case of *R.* v. *Kritz* [1949] 2 All E.R. 406; 113 J.P. 449, as to the meaning of an intent to defraud indicates that the court should satisfy itself that the defendant had the fraudulent intent of a dishonest mind in relation to the undertakers, at the time of abstraction. If, therefore, the court are satisfied in such a case that the consumer honestly believed that the insertion of the discs, etc., was only done in order to obtain a supply of electricity or gas on credit and to pay for any deficiency in the meter at the time of collection, there is an absence of the essential ingredient necessary to constitute a "fraudulent abstraction," *i.e.*, the fraudulent intent of a dishonest mind. If there had been an accepted practice whereby the undertakers' collector, on finding "tokens" in the meter, calculated the amount due and accepted payment of such amount, thereupon returning the "tokens" to the consumer without objection, such evidence would inevitably negative any intent to defraud. The situation may, however, be affected by the terms of the supply agreement and the practice of the supply authority.

Where the artificial means of obtaining a supply consists of filing or otherwise altering a current copper coin and inserting such coin in a meter designed for shillings or sixpences, there would be *prima facie* evidence of an offence under the Coinage Offences Act, 1936, and in such a case there would be no need to prove an intent to defraud. The material provisions of the Coinage Offences Act, 1936, are contained in s. 2 which enacts that "every person who . . . files or in any manner alters [(i) any current silver coin with intent to make it resemble or pass for any current gold coin, or (ii)] any current copper coin with intent to make it resemble or pass for any current gold or silver coin, shall be guilty of felony and on conviction thereof liable to penal servitude for life or for any term not less than three years." The words printed in square brackets are not immediately in point, since there are no meters designed to supply gas or electricity upon the insertion of a gold coin. The expression "copper coin" includes any coin of any metal or mixed metal not being a gold or silver coin.

CRIME ON BRITAIN'S WATERFRONT

By CHARLES BREAKS

The waterfronts of the seaports of the world have always provided a background for sinister dealings and violent crime and in recent years, at the other side of the Atlantic, have been instrumental in bringing into being Government Commissions inquiring into racketeering, gangsterism and organized extortion—murder actually being commonplace.

Fortunately, the docks, wharves and warehouses on the waterfront of Britain do not produce the major crimes and criminals of the type featured in the scenas of the motion picture producers or carry the infamous personnel that figure in real life abroad.

Crimes of violence are rare in British dockland—wounding and causing grievous bodily harm usually occurring amongst foreign crews.

Larceny, however, is a main problem. Year in and year out, the campaign goes on against the pilferers, who cost manufacturers, shippers, shipowners, insurance companies and trade in general, scores of thousands of pounds in losses through theft.

Organized theft on a large scale is infrequent—cases of simple larceny and larceny by servant are the ones that the magistrates have mostly to deal with, although there has been a considerable decrease in this class of offence during the past few years. The peak period of these two particular offences being in the immediate post-war era when the rationing of food and clothing still existed and so many dock sheds and warehouses were in a dilapidated state owing to the blitz.

The vulnerability of many cargoes, either on a quay or in the hold of a ship offer temptation to the wrongdoer and where

articles of value are concerned, the receiver of stolen goods still lurks in the background. Typical values of some of the more expensive items of merchandize may be of interest; the value of an ingot of tin, £20; a bale of fine cloth (suiting) £200 or £300; a case of fine linen (tablecloths, napkins, etc.) £150; a bale of furs, £2,000; a small package of gold pen nibs, £1,000.

Stolen carcases of beef, bales of scrap copper, cartons of butter, toys or shoes, bales of cloth, linen or furs, need illegal transport; this may be pre-arranged with the help of an unscrupulous employee or advantage taken of a careless official or a not too alert watchman; then, the driver, concealing the stolen goods in the centre of his load or in some prepared place on his vehicle, times his exit through the dock gates when traffic is heaviest and the police are fully occupied. For example, an official on the quay may take for granted the word of a driver who has brought for shipment, 15 bales of cloth—he looks at the driver's chit, "All right," he tells the driver, "put them down in shed number five"—the chit is signed and the official going away to attend to something else, leaves the driver to his own resources. The "grapevine" at a certain transport café, public house or club has let the driver know of someone willing to pay cash for stolen cloth of good quality; 14 bales are unloaded on to the floor of the dock shed—one remains on the lorry to be camouflaged by a tarpaulin sheet thrown loosely over it.

A later check reveals that one bale is missing. In following the matter up the driver is eventually questioned as to the missing bale; his reply is simply, "I left the proper load and got a signature for it!" The cloth by this time is far away and the police are faced with no easy task in their subsequent inquiries.

Amongst other methods occasionally used to remove bulky stolen property from the docks, is to drop it into a barge or lighter or take it on to a ship for illegal disposal at some other port. The petty thief has a great variety of ways of concealment of the article or articles he has stolen, *i.e.*, cutting a length of cloth from a roll and then winding it around the body; having special loops inside an overcoat that will hold tins of meat, salmon or fruit; tying a side of bacon flat to the torso; placing stolen goods underneath tools in a tool box; fastening the trousers at the ankle and literally using the trousers legs as "carrier bags"; having specially made pockets to accommodate a few bottles of whisky; carrying out pilfered articles in the pockets of a raincoat slung carelessly over the arm.

In the case of females, concealing stolen articles in their underclothing (well knowing that it is rare for female searchers, such as policewomen to overhaul them as they leave the docks). Carrying stolen goods out in buckets (under a layer of brushes and floorcloths).

Instances of driving out of the docks in a stolen export motor car or riding away on an export cycle have occurred. The stealing of lighting sets from export cycles, ripping cartons of chocolate and sweets and taking a few packets or handfuls out, all have an attraction for the petty thief.

Whisky, when it is stolen in a small quantity by a working gang, is usually passed around and quickly drunk—occasionally a greedy drinker is overcome—then, with further evidence such as a broken case or ripped carton and the finding of an empty whisky bottle, a successful prosecution results.

Tools from the tool boxes on tractors, cars or lorries; fruit, nuts, currants, sultanas, all receive attention by pilferers. With regard to loose fruit lying on shed floors as a result of damaged cases, a common excuse from defendants to magistrates in court is: "I thought it would be all right if I picked it up off the ground—I didn't think doing that was stealing!"

Stealing from ships by members of the crew and workmen (whilst in port) occurs. So far as members of the crew are concerned, it is usually ships' stores (meat, butter, tea, tinned fruit) that suffers, though derationing has certainly brought a decrease in this class of larceny by servants.

Workmen's tools, ships' fittings—there seems to be no limit to the size or type of article stolen from a ship. Even a piano has been known to vanish after passing down the gangway in the hands of psuedo workmen.

The pickpocket in the guise of a member of the crew sometimes pesters a certain area of dockland—entering the unlocked quarters of members of a crew whilst they are asleep and stealing cash and valuables from clothing or unlocked drawers and lockers. Sneak thieves taking advantage of the fact that seamen are notoriously careless and trusting where their money and jewellery are concerned.

Ships' linen in the form of counterpanes, sheets, blankets, cabin curtains, small carpets and towels, etc., suffer from theft.

Occasionally on cargo ships the ship's medicine locker is broken into—obviously in the search for those drugs which might be of use or sale to the drug addict.'

In some cases of theft of ships' stores, such as provisions, an attempt may be made to bluff the police by the production of a "phony" billhead, with the stolen articles listed thereon. These billheads being previously obtained in blank form from some store or shop overseas.

The packaging of many items exported leaves much to be desired, but manufacturerers find that the competitive prices at which they have to sell their goods abroad does not allow for the use of wooden cases where cardboard cartons can serve. Unfortunately, cartons and cardboard containers can be easily ripped with a hook or slashed open with a knife—chocolate, sweets and shoes are goods that suffer greatly from weak packaging.

The lorry driver with faked bills and notes, purporting to come from a firm of reputable haulage contractors, sometimes appears on the scene and as a result a load of beef or maybe valuable ingots of metal, vanish into the blue.

From ships there now and again comes a report of theft, which, after investigation, proves to be fictitious—the person making the report having either lost, sold or stolen the particular articles reported and to cover up his deficiency when his stock comes to be officially checked, resorts to a false story regarding the missing items.

On the whole, the detection of dockland theft by the police, is very successful. Prevention of theft is where the companies concerned maintain a body of honest, alert men in a regular watching system. Patrols with dogs have had great success in some areas.

Although there is not a sensational or desperate background attached to our ports, nevertheless, larceny, which comprises the major part of crime on Britain's waterfront, does still produce a costly problem—cognizant of this, magistrates have, in recent years made the dock thief think twice, by the imposition of heavy fines and sentences of imprisonment.

BOOKS AND PUBLICATIONS RECEIVED

Handbook of Child Law. Supplement to the Fourth Edition. London: Sir Isaac Pitman & Sons, Ltd., Pitman House, Parker Street, Kingsway, W.C.2. Price 2*s.* net.

OBSTRUCTIONS IN RIVERS

By A. S. WISDOM

Decisions of the courts over the past two and a half centuries give a wealth of detail concerning the illegality of obstructing the public navigation in rivers. In *R.* v. *Clark* (1702) 12 Mod. Rep. 615, an information was filed against Clark for causing locks to be built on the Thames to the obstruction of the navigation, and it was held that hindering the course of a navigable river and the taking of tolls to let people pass was contrary to the provisions of Magna Charta. The erection of a wharf or other accommodation in a navigable river, even though under licence of the conservancy authority, may be illegal if the wharf produces inconvenience to the public using the river for the purposes of navigation: *R.* v. *Lord Grosvenor* (1819) 2 Starkie 511.

At common law the obstruction of a public navigable river amounts to a public nuisance, and may be the subject of indictment (*R.* v. *Russell* (1827) 6 B. & C. 566), and *prima facie* any structure in the bed of a river may amount to an obstruction, as for instance in *A.-G.* v. *Terry* (1874) 38 J.P. 340, where a wharf, which extended so as to occupy 3 *ft.* out of a breadth of some 60 *ft.* available for navigation, was held to be an obstruction, although it only occurred at certain times of the tide. But whether an obstruction amounts to a nuisance is a question of fact for the jury, who are to say whether the public are in any way inconvenienced (*R.* v. *Bell* (1822) 1 L.J.K.B. 42); there must be actual obstruction: *R.* v. *Betts* (1850) 16 Q.B. 1022; 14 J.P.N. 318. It is no defence to show that an obstruction in a river impeding navigation was not an obstruction at the time it was erected, but has become such because part of the river has silted up, or for some other reason (*Williams* v. *Wilcox* (1838) 8 Ad. & El. 314); nor can an obstruction be excused on the ground that the impediment affords facilities to the public: *Denaby and Cadeby Main Collieries, Ltd.* v. *Anson* (1911) 103 L.T. 349. A right to obstruct a navigable river cannot be acquired by length of time: *Vooght* v. *Winch* (1819) 2 B. & Ald. 662.

A riparian owner may build an erection on his land though covered with water, so long as it does not interfere with the rights of navigation, or with the rights of other riparian owners (*Orr Ewing* v. *Colquhoun* (1877) 2 A.C. 839), but obstructions must not be erected in a stream so as to throw back the water on to an upper riparian owner's land so as thereby to flood his land or injure his mill: *Saunders* v. *Newman* (1818) 1 B. & Ald. 258. However, such a right may be acquired as an easement: *Alder* v. *Savill* (1814) 5 Taunt. 454. A natural obstruction or one formed by long natural deposit must not be removed if by so doing an injury would be inflicted on a lower riparian owner: *Withers* v. *Purchase* (1889) 60 L.T. 819.

A river may become obstructed in a variety of ways, *i.e.*, by (1) weirs and dams placed across the river; (2) wharves, piers and other accommodation works projecting into the stream; (3) the channel silting up; (4) ballast and rubbish thrown into the stream; (5) vessels sunk or inconveniently moored; (6) miscellaneous obstacles. It is proposed to discuss quite briefly the legal aspects of these different kinds of obstructions.

Weirs and dams

In early times, when roads were few and poor and movement by water was an important form of transport, there was apt to be bitter dispute, between those who used the rivers for purposes of commerce and navigation and the owners of mills and fisheries whose livelihood demanded streams restricted by mill dams, fish weirs, and the like. The free movement of navigation was encouraged in early statutes in which weirs were regarded as public nuisances. Magna Charta (*c.* 26) declared that "all weirs from henceforth shall be utterly put down through Thames and Medway and through all England, except by the sea coast." This prohibition was repeated in a slightly later statute, 9 Hen. III, c. 23 (1225), and a further Act, 25 Ed. III, st. 4, c. 4 (1350), (confirmed by 45 Ed. III, c. 2 (1371)) also ordered the destruction of all weirs, mills and other fixed engines of fishing which had been set up in or after the time of Edward I. These provisions were held to relate to navigable rivers only, and did not apply to weirs shown to have been in existence before the time of Edward I: *Williams* v. *Wilcox*, *supra*; *Rolle* v. *Whyte* (1868) L.R. 3 Q.B. 286.

During the nineteenth century the improvement of roads and the construction of canals and railways led to a decline in the importance of rivers for navigation, and rivers began more to be regarded from the point of view of fisheries. The position as regards fisheries is regulated at the present time under part II of the Salmon and Freshwater Fisheries Act, 1923, which prohibits the placing or using of fixed engines for taking or obstructing the free passage of salmon or migratory trout in inland and tidal waters. Fishing weirs or fishing mill dams cannot be used for taking such fish, but (*a*) fishing weirs extending more than halfway across a river at the lowest state of water may be used for taking salmon, provided such weirs have a free gap in the deepest part of the river between the points where it is intercepted by the weir, and (*b*) a fishing mill dam may be used to catch salmon if it has attached to it a fish pass approved by the Ministry of Agriculture, Fisheries and Food. A river board may acquire or take on lease, either by agreement or compulsorily, a dam, fishing weir, fixed engine, or other artificial obstruction, and alter or remove the obstruction, and may, with the Minister's consent, construct a fish pass in a dam and abolish, alter or restore any existing fish pass or free gap.

Section 44 of the Land Drainage Act, 1930, requires that no mill dam, weir or other like obstruction to the flow of a watercourse may be erected, raised or otherwise altered without the written consent (not to be unreasonably withheld) of the river or drainage board. Any question arising whether such consent is unreasonably withheld must be referred to arbitration. If any obstruction is erected, etc., in contravention of this provision, it is deemed to be an offence and the board may serve notice upon the offender requiring him to abate the nuisance within a specified time. In default, the board can obtain a summons requiring the person to appear before a magistrates' court who, if satisfied that the alleged nuisance exists, may order the person to abate the nuisance and impose a penalty not exceeding £100.

Accommodation works

On an indictment for a nuisance in a navigable river by erecting staiths for loading coal on to vessels it was held that a direction by the judge to the jury that the erection of the staiths was a public benefit was proper: *R.* v. *Russell*, *supra*. But in a later case concerning the erection of a wharf (*R.* v. *Randall* (1842) Car. & M. 496), it was decided that the question for the jury was whether the wharf occasioned any hindrance to river navigation by vessels of any description, and not whether the erecting of

the wharf had caused a benefit to navigation in general. In *A.-G.* v. *Terry, supra*, it was said " it is no answer to say that there is room for the ships and that if they are navigated with skill and care there will be no obstruction. Those who use the river are entitled to say that they have a right to the whole of the space."

The general principle is that any one who places or keeps in a navigable river any obstruction to the navigation is liable for injury caused thereby (*Brownlow* v. *Metropolitan Board of Works* (1864) 6 L.T. 187), and the owners of structures on the shores of navigable rivers may be responsible for damage occasioned by negligence unless such structures are kept in repair or the owner gives notice of the danger: *White* v. *Phillips* (1863) 9 L.T. 388. In *Queens of the River Steamship Co.* v. *Thames Conservators* (1907) 96 L.T. 901, a river conservancy authority were held to be under a duty to take reasonable care that persons who pay tolls in respect of vessels navigating the river can navigate without danger; but this duty is only to take care that the part of the river ordinarily used for navigation is safe and does not apply to places where the navigation cannot be said to be going on, such as wharves. Where the duty applies the authority are not liable unless they knew or ought to have known of the condition giving rise to the damage. A conservancy authority who are empowered to remove obstructions in the river are not under a duty to remove piles in part of their navigation for which they are forbidden to collect tolls, although the piles are dangerous and the authority ought to have been aware of the danger: *Forbes* v. *Lee Conservancy Board* (1879) 4 Ex. D. 116.

If a jetty, which obstructs to some degree the public navigation of a river, is constructed under the authority of a statute, no action will lie against the owner of the jetty by adjoining owners alleging that the jetty obstructs their free navigation of the river, since the effect of the statute was to contemplate some interference with the navigation: *Kearns* v. *Cordwainers' Co.* (1857) 23 J.P. 760; *see* also *A.-G.* v. *Thames Conservators* (1862) 8 L.T. 9. But though a statutory licence might be the licensee's justification as far as the public right of navigation is concerned, it does not authorize the licensee thereby to affect injuriously the land of another riparian owner: *Lyon* v. *Fishmongers' Co.* (1876) 42 J.P. 163.

Silting up of channel

There is no liability at common law on the owner of the bed of a navigable river to prevent the navigation from becoming silted up and choked with weeds, although the owner takes tolls for the navigation (*Hodgson* v. *York Corporation* (1873) 37 J.P. 725), and the proprietor of an inland navigation, who was not the owner of the bed, was held not to be under any obligation to cut the weeds or dredge the silt, unless it was necessary to do so for the benefit of the navigation: *Cracknell* v. *Thetford Corporation* (1869) 38 L.J.C.P. 353.

By s. 34 of the Land Drainage Act, 1930, river and drainage boards are empowered to maintain and improve watercourses, although this is a permissive and not a mandatory function (*East Suffolk Rivers Catchment Board* v. *Kent* (1941) 105 J.P. 129), and under s. 57 of that Act a riparian owner may be compelled to cleanse and scour the channel and maintain the bank of a watercourse if his neglect to do so causes injury to any other land. Section 35 of the Act places the person having control of a watercourse (other than one under the jurisdiction of a river or drainage board) or the riparian occupier under a duty of maintaining the watercourse in proper order, so that the proper flow of water is not so impeded as to injure agricultural land belonging to or in the occupation of some other person, unless, *inter alia*, the person having control or the riparian occupier can show that the condition of the watercourse is not due to any action or default on his part, *e.g.*, that the watercourse is choked from natural causes (*see Neath R.D.C.* v. *Williams* [1950] 2 All E.R. 625; 114 J.P. 464.

Under s. 259 of the Public Health Act, 1936, any part of a watercourse, not being ordinarily navigated by vessels employed in the carriage of goods by water, which is so choked or silted up as to obstruct or impede the proper flow of water so as to cause a nuisance or give rise to conditions prejudicial to health is to be regarded as a statutory nuisance for the purposes of part III of the Act. This provision cannot be exercised in respect of a watercourse within the jurisdiction of a river or drainage board for land drainage purposes, except after consultation with the board.

Ballast and rubbish thrown into rivers

It is an offence under several statutes to cast ballast, rubbish, etc., into rivers. 34 and 35 Hen. VIII, c. 9 (1542-43) prohibited the casting or unloading of ballast, rubbish, gravel . . . from ships into a haven, road, channel or river flowing or running to port-towns or cities. Section 11 of the Harbours Act, 1814, forbids ballast, rubbish, etc., to be cast or thrown from ships or from the shore into harbours, havens, or navigable rivers (so far as the tide flows) so as to tend to injure or obstruct the navigation. Every person who throws or puts ballast, earth, ashes, stone, or other thing into a dock or harbour is guilty of an offence, unless done for the purpose of recovering land lost by reason of the overflowing or washing of a navigable river or for protecting land from future loss or damage (Harbours, Docks and Piers Clauses Act, 1847, s. 73). By s. 259 (2) of the Public Health Act, 1936, a person who throws or deposits cinders, ashes, bricks, stone, rubbish, dust, filth or other matter likely to cause annoyance into or in a river, stream or watercourse, or who suffers any such act to be done, is liable to a penalty not exceeding £2.

Moored or sunken vessels

The mooring and keeping moored of a vessel across a public navigable creek, thus preventing the plaintiff from navigating his barges and involving him in having to convey his goods a great distance by land, was held in *Rose* v. *Groves* (1843) 5 Man. & G. 613, to be special damage for which an action would lie.

The owner of a vessel sunk by misfortune or accident in a navigable river cannot be indicted for not removing it (*R.* v. *Watts* (1798) 2 Esp. 675), but the owner of a vessel sunk by unavoidable accident in a navigable channel, whether in the usual track of navigation or not, so long as he continues to have possession and control of the vessel, must take due precautions to prevent injury to other vessels by their striking against it: *White* v. *Crisp* (1854) 10 Ex. 312. Power is given under statute for harbour and conservancy authorities to remove or destroy wrecks and to recover the expenses thereby incurred; *see* s. 56 of the Harbours, Docks and Piers Clauses Act, 1847, s. 530 of the Merchant Shipping Act, 1894, and s. 16 of the Thames Conservancy Act, 1950.

Miscellaneous obstacles

A ferry rope (*Hilton* v. *Scarborough (Lord)* (1714) 2 Eq. Cas. Abr. 171), or a mooring anchor, whether floating or under the water, the position of which is insufficiently marked or indicated, may amount to an obstruction: *Jolliffe* v. *Wallasey L.B.* (1873) 38 J.P. 40; *Hancock* v. *York, etc., Rly.* (1850) 10 C.B. 348. A bridge across a navigable river, even if its erection is not authorized, is not necessarily an obstruction (*R.* v. *Betts*,

supra), but unreasonable delay in operating a swing bridge can amount to an obstruction: *Wiggins* v. *Boddington* (1828) 3 C. & P. 544. Raising the level of the water in a stream is not usually a proper subject of complaint for the interference of the courts: *Ingram* v. *Morecraft* (1863) 33 Beav. 49. The placing of public services, such as electric cables and telegraph lines, across navigable channels is effected under statute with due safeguards for preventing interference with the navigation (*see* s. 22 of the Electricity (Supply) Act, 1919, as amended; ss. 6 and 32 of the Telegraph Act, 1863, as applied by s. 2 of the Telegraph Act, 1868, etc.). It is worth noting that in a recent Canadian case (*Stephens and Matchins* v. *MacMillan & MacMillan* [1954] 2 D.L.R. 135) it was held that wires placed without the necessary statutory consent across navigable waters amounted to a public nuisance.

Remedies for obstruction

An obstruction in a watercourse which amounts to a private nuisance may be abated in a reasonable manner, provided the least injurious means are employed (*Hill* v. *Cock* (1872) 36 J.P. 399), but an individual is not entitled to abate an obstruction in a navigable channel amounting to a public nuisance unless he suffers some special injury beyond that which is suffered by the rest of the public: *Colchester Corporation* v. *Brooke* (1845) 7 Q.B. 339. An obstruction which interferes with the right of access is an injury to private property and is actionable without proof of special damage: *Rose* v. *Groves* (1843) 1 Dow. & L. 61. The obstruction of the navigation of a public navigable river is a public nuisance and as such may be the subject of indictment (*R.* v. *Russell* (1827) 6 B. & C. 566) or the Attorney-General may file an information to restrain the person responsible (*A.-G.* v. *Lonsdale* (*Earl*) (1868) 20 L.T. 64, or ask the court for a personal decree against the defendants (*A.-G.* v. *Parmeter* (1811) 10 Price 378). In a proper case an application for *mandamus* may be made to the court: *R.* v. *Bristol Dock Co.* (1839) 1 Ry. & Can. Cas. 548.

WEEKLY NOTES OF CASES

HOUSE OF LORDS

(Before Earl Jowitt, Lord Normand, Lord Morton of Henryton, Lord Radcliffe and Lord Tucker)

ESSO PETROLEUM CO., LTD. AND ANOTHER *v.* SOUTHPORT CORPORATION

October 17, 18, December 12, 1955.

Foreshore belonging to local authority—Damage arising from stranding of vessel—Plea of negligence in navigation—Stranding of ship due to fractured stern frame—No right of plaintiffs to rely on negligence in relation to fracture.

APPEAL from decision of Court of Appeal (*sub nom. Southport Corporation* v. *Esso Petroleum, Ltd.*) (1954), reported 118 J.P. 411.

In December, 1950, an oil tanker belonging to the appellants bound from Liverpool to Preston developed a steering fault when approaching an estuary in rough weather. In view of the weather and the danger of turning round, the master decided to continue into the channel. Soon after, the vessel took a heavy sheer to starboard and ran aground on a revetment wall. To save the vessel and the crew from grave danger, the master discharged a considerable quantity of oil to lighten the vessel, which oil became deposited on the respondents' foreshore, causing damage. In an action for trespass, nuisance and negligence brought by the respondents against the appellants and the master, the respondents pleaded as negligence negligent navigation by the master and no more, and no complaint was made of any act or default on the part of the appellants. The trial judge found that there was no trespass or nuisance, that the master had not been negligent, and, therefore, that the appellants had not been negligent. He further found on the pleadings that the onus of proving inevitable accident was not on the appellants. The Court of Appeal held that this onus was on the appellants and that they had failed to discharge it.

Held, there was no negligence on the part of the appellants since, on the pleadings, they could only be liable on the ground of vicarious responsibility for the acts and defaults of the master, and, the master having been acquitted of any negligence, the appellants must also be acquitted.

Per LORD TUCKER: In actions between users of the highway and the occupier of premises adjoining the highway which have been damaged by a person lawfully using the highway, the person who has suffered damage cannot recover in trespass in the absence of negligence on the part of the person who has caused the damage.

Decision of Court of Appeal reversed in part.

Counsel: *Nelson, Q.C.*, and *G. B. H. Currie* for the appellants; *Carpmael, Q.C.*, and *Baucher* for the respondents.

Solicitors: *Thomas Cooper & Co.*; *Sharpe, Pritchard & Co.*, for town clerk, Southport.

(Reported by G. F. L. Bridgman, Esq., Barrister-at-Law.)

MISCELLANEOUS INFORMATION

RURAL WATER SUPPLIES AND SEWERAGE ACT, 1955

For the past 11 years the Rural Water Supplies and Sewerage Acts have provided £45 million for England and Wales towards water supplies and sewerage schemes in rural areas. This sum will have been exhausted by the early part of 1956 and the Rural Water Supplies and Sewerage Act, 1955, provides for another £30 million being available. It has been accepted that there should be exchequer assistance towards these services in rural areas where the cost is high in relation to the capacity of the consumers and ratepayers. In moving the second reading of the Bill in the House of Commons on October 25, 1955, the parliamentary secretary to the Ministry of Housing and Local Government said that at that time £40 million worth of water schemes and £28 million worth of sewerage schemes were in progress. He explained, however, that there are many schemes on which local authorities are anxious to embark but which could not be authorized. The work in hand was the highest since the war. He said the Government recognize that there are many schemes which are urgently needed and which cannot be postponed without serious consequences. Schemes which, in the opinion of the local authority and of the Minister are to be regarded as in this category will still be authorized up to the original total. Any schemes which the Ministry have already promised to authorize this year will be allowed to proceed. But the programme for 1956-57 must be subject to wider consideration which will affect all similar programmes involving heavy capital expenditure. For some years, water schemes took about 60 *per cent.* of the money spent. In the last financial year they took about 53 *per cent.* and in the last half year only 37 *per cent.* The parliamentary secretary calculated that within the next few years the ratio between the two will be roughly 40 *per cent.* water and 60 *per cent.* sewerage. Assuming annual programmes of roughly the same size as up to the present it is estimated that in about eight years' time schemes will have been authorized to supply all but isolated properties and the smallest villages with water. In about 15 years the Ministry will have authorized sewerage schemes for most of the rural areas needing them.

NORFOLK COUNTY FINANCE, 1954-55

Those parts of Norfolk which so far remain unoccupied by the Air Force of a Friendly Power constitute one of the few truly rural areas of England, and this characteristic of the county, on which so much else depends, is strikingly brought to notice by county treasurer Mr. T. Clay in his excellent financial summary. He includes a table of information about the county districts which shows that 1,250,000 acres out of the total county area of 1,303,000 acres is in the rural districts and that whereas the comparatively very small urban area has a rateable value per head of £6 6*s.*, the rural average is £3 15*s.* only: having regard to the total derating of agricultural land this position is not really surprising. Much can be said both for and against the present exemption: the associations of local authorities have discussed it at length and the result has been broadly that urban

interests favour re-rating while their rural counterparts do not. From replies given in Parliament by the Minister of Housing and Local Government we apprehend that there is little likelihood of any immediate change in the law.

The low rateable value per head in Norfolk enables the county to secure a large equalization grant amounting to £1,660,000, and Mr. Clay tells us that in 1954/55 out of a total expenditure of £7¼ million, more than £5¼ million was met from government grants, equal to 14*s.* 7*d.* out of each £1 of expenditure. County rate precepts totalled £1½ million, and amounted to £3 6*s.* per head of population; the rate being 16*s.* 6*d.*

A concise summary of the main features of each committee's accounts is given in the first part of the booklet: we were particularly interested in the notes indicating some of the special problems and expenses of a rural and coastal area. Mr. Clay points out, for instance, that loan charges on money borrowed to pay capital grants to county district councils, mainly towards the cost of their sewerage schemes, amounted to £21,000 (£87,000 was given during the year), that £1¼ million was spent on county and trunk roads, and that £9,000 in 1954/55, plus £29,000 in 1953/54, had been granted to county districts for coast protection.

Smallholdings transactions are also of unusual magnitude, no less than £1¼ million out of the total county debt of £5 million being attributable to this service. The county council owns nearly 32,000 acres and has 1,600 tenants: it manages this considerable estate without any charge to the rates, and has in hand a general reserve fund of £33,000.

The general financial position of the county is equally sound; the general revenue credit balance at March 31 was £663,000 and the consolidated balance sheet showed cash in hand amounting to £431,000.

PRISON CAMPS IN NORTHERN INDIA

A new method of dealing with criminals is being tried in Northern India where they can be employed on productive work of national importance which at the same time brings them nearer to the conditions of normal life. The first camp has been established on the banks of the river Chandraprabha near the city of Banaras. Suitable prisoners have been transferred to the camp from various gaols in the province. The main work being undertaken is the construction of a dam across the river which will take about 2½ years to complete. The prisoners live as free men without the atmosphere created by barbed wire or high walls. There are no barracks, no cells, and no gates closed at night. It is hoped that this will encourage the desire to work and earn after release. When the scheme was introduced it was felt by many people that the prisoners would use the opportunity to escape but so far there has been no evidence of this. The prisoners live in tents to which all necessary sanitary and water services have been supplied. They receive small payments for their work which they can spend in the canteen where there is a radio. There is also a cinema in the camp.

ESSEX WEIGHTS AND MEASURES REPORT

Modern trends referred to in the report of Mr. F. W. Horsnell, chief inspector to the county of Essex, for the year ended April 30, are the increase in the number of company shops and the consequent decrease in the number of one-man businesses; and the continued growth of the range of goods which are pre-packed on the premises of the manufacturer. It is apparent, says the report, that pre-packing not only minimizes the opportunities for adulteration and the giving of short weight or measure, but also enables producers to market their goods in attractive containers. New machinery brought into use during the year included a machine which automatically unloads and bags coal. There has also been an increase in the use of meters for the measuring of fuel oil which is a welcome replacement of the old-fashioned dipstick.

Mr. Horsnell agrees with other inspectors in thinking that sales by weight, measure or number are desirable in the case of most commodities. The number of articles so sold is increasing, but there are still sales of soft fruit by the punnet, vegetables by the bag and manure by the load which invite fraudulent practices.

There is a significant passage dealing with the sale of fuel by weight. " There is little doubt that whilst there is a general all-round improvement as regards the accuracy of weight and the standard of quality of articles of foodstuffs, this improvement has not yet been extended to the coal trade although transactions involving the sale of wood fuel gave little cause for complaint. It would appear that the existence in Essex of legislation by which wood fuel must be sold on a weight basis has had the effect of sending the itinerant vendors residing in London and who had been in the habit of doing business in the rural parts of Essex, into other counties where such provisions do not exist. This would seem to indicate the necessity for legislation on a national scale covering wood fuel." As to coal, of 7,203 sacks weighed 921, or 12¾ *per cent.* were found deficient. This, says Mr. Horsnell, is a figure which gives cause for grave concern. There were in all 145 prosecutions in respect of fuel deliveries.

An unusual case, resulting in a prosecution, concerned the sale of eggs. A farmer sold a mixture of duck and hen eggs under the unqualified description " Eggs." The price charged was that ruling for hens' eggs. The vendor maintained that the description could justifiably cover any eggs. Proceedings were instituted and the court upheld the prosecution's contention that the public expected and was entitled to receive hens' eggs in response to a request for eggs.

LEGAL AID AND ADVICE ACT

The following sections of the Legal Aid and Advice Act, 1949, are, by the Legal Aid and Advice Act, 1949 (Commencement No. 5) Order, 1955 (S.I. 1775) to be brought into force on January 1, 1956, in relation to proceedings in county courts, Durham Palatine Court, Mayor's and City of London Court, Liverpool Court of Passage, Salford Hundred Court, Tolzey Court of Bristol, and Norwich Guildhall Court: sections 1–4, 6, 12, 14–16, 17 (1) (2) and schs. 1, 2 and 3.

OVERLAPPING IN SOCIAL WORK

Sir Allen Daley, M.D., F.R.C.P., former medical officer of health for London, gave an address on the role of social work in maintaining and strengthening the quality of home life at the annual meeting of the National Council of Social Service. He started by emphasizing that for a good home life there must be good family relationship and he mentioned that it had been estimated that about three *per cent.* of all families were what are called " problem families." Many people could be helped if social work was applied at the right time. Poverty and bad housing make for poor family relationships. Many diseases are much more prevalent among the poor than among the rich. A high death rate means a high illness rate. Although grinding poverty has gone, there still remain many who find it difficult to make ends meet. Housing is very important. In London there are 50,000 families on the lists of those in urgent need of housing. Sir Allen then asked " What are the practical remedies to improve the lot of people who have fallen by the wayside? " " What can be done to prevent danger to those who are at risk of falling? " " Is all possible being done within the framework of the existing law to improve the way of life of people? " He enumerated about 40 distinct types of social workers who may be visiting the homes of people in this country. All are trying to help the family—often acting quite independently of each other. Multiple advice confuses those who are to be helped. He contrasted the French system where there is one general social worker, employed by the public authority, who can call in a specialist social worker but only for specialist advice. All social workers in France have the same basic training followed by specialist training where necessary. There are registers of all persons receiving help from any statutory or voluntary agency. An important element of the French system is that the family know who their social worker is and every family needing any kind of help has some choice in the selection of their particular visitor. Sir Allen pointed out that in England when a routine visit of the health visitor has ceased there is no real way to know if the family is going down hill. The initiative of seeking advice must be taken by the family. This is usually only when a crisis arises and, by then, irremediable damage may have been done. In France, by law, co-ordination is affected by centralizing the work in one person in one department; in England, committees are used to ascertain the needs of the problem family. He deplored the multiplicities of agencies concerned. Bad cases fall between every stool until the N.S.P.C.C. is called in and the parent may be sent to gaol.

Turning to preventive work he described this as primary and secondary. Religion can do much but this does not apply to many people; education can do much. Many people starting family life are ignorant of the helps which are available. They should know where they can turn for good advice. He criticized the intensive specialization which exists and suggested that each social worker should look at the family as a whole and pass on any special problem to the agency concerned. He said there were 30,000 whole-time medical and social workers who may be visiting people in their own homes in England and Wales. Several visitors may be trying to help one family. A mother may have conflicting advice and ignore it all.

In conclusion he asked " Are we doing enough to inculcate in the minds of people what good home life is and to put it in such a way that they will strive for it? " " Is there ready access for any family in difficulty to obtain advice? " " Do they know where help can be got? " " Why do so many fail to seek help in time? " " How can overlapping be prevented? " " Is social work too specialized? "

COUNTY COURTS ACT, 1955

By the County Courts Act (Commencement) Order, 1955, dated November 25 (S.I. 1774 (C.13)), ss. 1 to 4 of the County Courts Act, 1955, are to come into force on January 1, 1956.

SLOW BRAIN IN FAST CAR

This is a title of an article in a recent issue of *Canada Health and Welfare*. Although in Canada the summer months carry the greatest accident hazards on the roads, to most people the last three months of the year are far more deadly, with December accounting for 11 *per cent.* of the year's total accidents. It is considered that the most important contributory factor in road accidents is that a low physical and mental standard is required from drivers, and that few of them realize that a car hitting a stationary object at 60 miles an hour has the same impact as if it were dropped off a 10-storey building on a concrete pavement. The number of motor vehicles registered in Canada increased from 1,500,000 in 1945 to 3,600,000 in 1954. About 3,000 persons will have been killed on the road in 1955. The contention that the car is quicker than the brain seems to be borne out by the fact that 30 *per cent.* of accidents are attributable to "speed too fast for conditions"; 74 *per cent.* of those involved in accidents had five or more years of driving experience, so novices are not the greatest offenders. Weather and road conditions are not the main cause of accidents as some 64 *per cent.* occur in clear weather and 63 *per cent.* on absolutely dry surfaces. Dusk is the most dangerous time of the day; early morning the safest. Most casualties in the very young and very old groups are pedestrians. In total, accidents are the third highest cause of death in Canada and road accidents are the single biggest factor in the group. It is evident that the fault lies more with the man than the machine, and that the brain is not as potent as the horsepower. At the most only five *per cent.* of motor accidents in Canada are caused by mechanical failure. It is suggested in the article that drivers and pedestrians will have to learn some of the facts of the motoring age and when necessary "be cracked sharply over the knuckles" for bad driving attitudes, lack of skill and rudeness. Similar conclusions were reached in varying forms by the delegates attending the first National Highway Safety Conference convened in Ottawa by the Canadian Good Roads Association. As a result of the conference, a permanent highway safety organization, the Canadian Highway Safety Conference, has been formed. The whole range of safety problems will be the responsibility of this organization to explore and to solve.

HOUSING REPAIRS AND RENTS ACT, 1954

In connexion with *R.* v. *Paddington, &c., Rent Tribunal* [1955] 3 All E.R. 391; 119 J.P. 565, it is interesting to consider a decision given by the Islington Rent Tribunal on November 10, 1955, upon applications made under ss. 24 and 40 of the Housing Repairs and Rents Act, 1954, relating to 30 flats at Dalmeny Avenue, N.7. The learned chairman, Mr. Harry Samuels, said: "These are applications by landlords under s. 40 and s. 24 of the Housing Repairs and Rents Act, 1954. Dealing firstly with s. 24, the services provided by the landlord are provision of hot water, lighting and cleaning of the hall, corridors, and other common parts, and the maintenance of the garden. Of these only the provision of hot water was a term of the tenancy agreements. . . . The caretaker's duties included attending to the boiler, keeping the hall, corridors and stairways clean, putting the lights on and off in the common parts, keeping the garden tidy. But his function (as the evidence made clear, in particular that of the caretaker himself), was that of a caretaker employed to look after the property more than that of a porter. Consequently we had to consider what proportion of this item of cost is to be attributed to his work in connexion with the tenants' services. The evidence given by the tenants was mainly directed to establishing that there had been a marked deterioration in the services since 1939. Having heard the evidence, we are satisfied that in August, 1954, the tenants were getting substantially less value from the caretaker than before the war. Admittedly there has been some improvement this year as a result of the present landlords taking over the property, although it was also shown, and the caretaker did not deny, that the tenants who are opposing these applications have as a result been meeting with difficulty in having their day-to-day requests attended to. While we think it reasonable to attribute 80 *per cent.* of the 1939 costs to these services, we assess the proportion of the 1954 costs at 50 *per cent.* This results in a figure of £207 18*s.* 8*d.* for 1939 and £253 13*s.* 4*d.* for 1954, the difference being £45 14*s.* 8*d.* instead of £247 claimed.

"As regards the item 'Management and Supervision of Services,' these were calculated in the original statement at 15 *per cent.*, but in the course of the hearing the landlord agreed that five *per cent.* would be a more reasonable basis. We accept the amended item, as well as the other items, *viz.*, boiler fuel, electricity, insurance, cleaning materials, maintenance, repair, and renewal of boilers. Mr. Millner made a general submission that these increases in costs were a burden which fell on the community, that the tenants should not be called upon to bear them *in toto*, but that they should be fairly spread between landlord and tenants. As we read this section, while it does not entitle the landlord to claim more than the proved increase, we find no grounds in this case for deciding that he should get less. In the result we find a total increase of cost of £336 14*s.* 7*d.* as against £538 8*s.* 2*d.* claimed, and we accordingly allow an increase of £9 in flats with an additional room and £7 4*s.* 1*d.* in the others.

"A point of some difficulty was raised in the applications under s. 24. This section provides for a determination by the tribunal of the value of certain furniture and services, so that this amount may be excluded from the rent when calculating the maximum amount of repairs increase that may be recovered (the 'stopper' or 'ceiling' clause). Mr. Collard for the landlord contended that in making its determination the tribunal must include a figure representing payment for all the services, whether contractual or non-contractual. In other words, he asked us to find that the scope of s. 24 (3) (*b*), is coterminous with that of s. 40 and he contended, not without force, that it would be illogical and unfair to treat non-contractual services differently from contractual services in the context and for the purposes of this section. The point of construction was argued fully by counsel on both sides; if for no other reason than courtesy, I propose to give our reasons for the view we have formed. In comparing the two sections we find that the language is different. Section 24 (3) (*b*) refers to 'furniture or services used or provided under the terms of the tenancy or statutory tenancy.' Section 40, on the other hand, refers to cases where 'services for the tenant are under the terms and conditions of the letting to be provided, or are provided, by the landlord.' That is to say the former provision appears on its face to relate to services which the landlord has accepted the obligation to provide, whereas the latter relates both to services which the landlord has accepted the obligation to provide and those where he has accepted no such obligation. Mr. Collard referred us for the meaning of 'terms of the tenancy' in s. 24 (3) (*b*) to the case of *Seaford Court Estates, Ltd.* v. *Asher* [1949] 3 All E.R. 155, where Denning, L.J., defined 'terms' as meaning 'terms binding by contract or imposed by statute,' and he argued that the liability to pay an increase of rent in respect of a non-contractual service was a liability imposed on the tenant by the tribunal's determination under s. 40, and it thus became a term of the tenancy imposed by statute. But the determination of the tribunal does not, it seems to us, have the effect of imposing on the landlord the obligation to provide the service. If that had been the intention, the section could and, we think, would have said so. The effect of the determination is that if the service continues to be provided the tenant must pay the increase. If the landlord withdraws the non-contractual service (as he is entitled to do) specific provision is made for this in s. 40 (3)—it is to be treated as a transfer of burden, and it is worth while noting the words in this subsection: 'where any such determination has been made in respect of services which the landlord is not under the terms and conditions of the letting liable to provide.' These words certainly lend support to the view that the section contemplates the continuance of non-contractual services after the tribunal's determination.

"For these reasons we think that non-contractual services, or rather services which the landlord is not under an obligation to provide, are not within the meaning of 'services provided under the terms of the tenancy or statutory tenancy' in s. 24. We are told by counsel that the point has not yet been decided. If we are wrong in our view, we shall be glad to be corrected. On this finding we determine that the amount under s. 24 is £17 8*s.* in the case of those flats with an additional room, and £13 18*s.* 4*d.* in the other cases."

PUBLIC HEALTH OVERSEAS

Sir Allen Daley, formerly medical officer of health for London, gave an address at the annual week-end school of the Association of Public Health Lay Administrators in which he described the organization of public health work in certain countries overseas, of which he had had personal experience. He had found local government very much stronger in Britain than elsewhere despite recent tendencies for some functions to be taken over by the central government. In both Australia and Canada the effective public health departments are those of the State or Province with the exception of Montreal, Toronto and Vancouver. Nowhere is the committee system as strong as in Britain. There are no health committees attached to the State or Province and the head of the department is responsible to the Minister of Health and he, in turn, to the Prime Minister and the Cabinet. In the city of Baltimore, where Sir Allen held an official appointment, there is a health committee which does not meet regularly. In the large cities in the United States, the mayor and in the States, the governor, appoints the chief officers. There is generally, therefore, a change of officials every time there is a fresh election. In New York there have been six commissioners of health in the last 15 years compared with

four county medical officers in London in 64 years. In Baltimore, the difficulty was surmounted 20 years ago by provision being made for the four-year term of the health commissioner to begin two years after the election of a new mayor. An incoming mayor must therefore keep him for two years and then he generally decides to keep him for the remainder of his mayoral term. The health commissioner is under no obligation to report to the health committee but sends a weekly letter to the mayor giving the vital statistics and mentioning any matters of special interest. He has much more power than the medical officer of a British city, and he acts on his own responsibility, not on behalf of a local authority or a committee.

REVIEWS

Green's Death Duties. Fourth (Cumulative) Supplement to Third Edition. By H. W. Hewitt. London: Butterworth & Co. (Publishers) Ltd. Price 7s. 6d. net.

This supplement of 50 pages brings *Green's Death Duties* up to date as on September 1, 1955. There is no fresh legislation to record since the third supplement appeared, but the editor has amplified the notes, there to be found, upon the Finance Act, 1954. The most important new matter is to be found in case law about insurance policies, some of which was under appeal when the supplement went to press. There have also been some changes of practice, and an alteration in the double taxation agreement with South Africa, which may benefit some British taxpayers. For the rest, it is proper to say that the supplement is of the familiar sort for Messrs. Butterworth's major series of "Modern Text Books," fitted to go into a pocket at the back of the book; it has a noter-up clearly printed, and gives the text of all relevant legislation which has appeared since the main work was issued. Mr. Hewitt repeats the warning that, although he is authorized by the Board of Inland Revenue to do this work, the opinions expressed are not to be taken as the board's opinions. For practical purposes, however, the practitioner using the book can be content to know that Mr. Hewitt is a senior officer at Somerset House, and that it is unlikely that anything to be found in the book will prove unreliable.

Underhill's Law Relating to Trusts & Trustees. Tenth Edition. Fifth Cumulative Supplement. By M. M. Wells. London: Butterworth & Co. (Publishers) Ltd. Price 7s. 6d. net.

This is another in the regular series of supplements issued by Messrs. Butterworth for their major series called "Modern Text Books." It comprises 40 clearly printed pages, with a tag to fit into the back cover of the book. It is only a year since the fourth cumulative supplement appeared, and in that interval there has been no fresh legislation bearing on the subject. There have, however, been several cases in the courts, and also changes in Chancery practice. The supplement (though containing only 40 pages of text) is equipped with a table of cases covering 10 pages, which in itself is evidence of the desirability of being armed with this safeguard, against having overlooked what may have been decided. The main work and the supplement together cost 77*s*. 6*d*.

A Guide to Compulsory Purchase and Compensation. Third Edition. By R. D. Stewart-Brown. London: Sweet & Maxwell. Price 18s. 6d. net.

No reader of the *Justice of the Peace and Local Government Review* needs to be reminded of the complexity of the law relating to compulsory purchase and compensation. Already there are several books, large and small, upon these subjects, but there is still room for a short and simple book, of the sort likely to be useful not only to the specialist but to a solicitor in general practice, who may be confronted by a client with some problem at short notice. The book has also been found useful in its earlier editions to planning officers and surveyors, in public employment as well as in private practice. Now that consolidation of the statute law has been accepted as a duty by governments of all parties, and has made great strides in the past 10 years, it is greatly to be hoped that the law of compulsory purchase of land will be tackled for consolidation. It may be that this would have been done already, but for political controversy centred on the Town and Country Planning Act, 1947, and the amending legislation of 1953 and 1954. Until Parliament accepts the responsibility it ought to have shouldered long ago, of presenting the public, landowners, and purchasing authorities, and the professions concerned, with a statute in intelligible form, textbook writers and law publishers must do their best with the principal statute, now 110 years old, and with the jungle of twentieth century legislation. Mr. Stewart-Brown's small book (of which this is the third edition) has for some years held a worthy place among small works on the subject. As he truly says in the present preface, the financial provisions of the Act of 1954 must cause great difficulty, and it will be worth while for the private practitioner and the local government official to be provided with this handy supplement to the larger books, dealing with the topic on more ambitious lines.

The Proof of Guilt. A Study of the English Criminal Trial. By Glanville Williams, LL.D., Fellow of Jesus College, Cambridge; of the Middle Temple, Barrister-at-Law. London: Stevens & Sons, Ltd. Price 17s. 6d. net.

This book is published under the auspices of the Hamlyn Trust. The trustees organize courses of lectures of high interest and quality by persons of eminence, under the auspices of co-operating universities, with a view to the lectures being made available in book form to a wide public. The seventh series of lectures was delivered by Dr. Glanville Williams at Birmingham University in October this year, and this book is the result.

Dr. Glanville Williams paints a sombre picture of English criminal justice in the past and then goes on to suggest ways in which our present procedure might be improved. He does not suggest that any deformities still to be found in our system of criminal procedure are of serious proportions. His criticism of the present system is not so much because it leads to the conviction of the innocent as because it too readily assists the acquittal of the guilty. He suggests that trial by three judges, or by a professional judge sitting with two or more experienced lay magistrates as assessors, giving reasons for their decision, and subject to correction on appeal, would be a better trial than by jury.

The author does not find much wrong with the magistrates' courts. He thinks that the whole process whereby the effective administration of most of the criminal law has been shifted from juries to magistrates is a striking vote of confidence in the magistracy by all concerned, if it is not also a vote against the efficiency of the jury system. He discusses the relative merits of the lay and the stipendiary bench and concludes that the majority of critics still wish to see reforms in the lay system rather than any extension of the professional one.

Altogether this is a most readable book and one which should be studied by anyone, be he lawyer or layman, who is interested in the improvement of criminal justice.

Justice of the Peace Handbook. By Charles D. Pagan, W.S., Clerk of the Peace of Fife. William Hodge & Co., Ltd., 86 Hatton Garden, London, E.C.1. Price 15s. net.

This is a handbook for Scottish justices, written by a Scottish lawyer. That does not mean that it will not prove of use to English readers, many of whom will like to make comparisons between Scots law and procedure and English. Of late there has been much discussion of Scottish methods of conducting prosecutions, and those who object strongly to what is generally described as police advocacy many contrast this with the system of procurators-fiscal, including the justices' fiscal.

The Scottish justice has evidently a less jurisdiction than his English opposite number, and in most areas far less to do. His office appears to be less ancient, and organized summary courts to date only from 1707. He has a criminal jurisdiction in certain respects concurrent with that of the sheriff, and a very limited jurisdiction in the small debts court. The scheme of juvenile court organization also appears to differ considerably from our own.

We have looked at this book from the standpoint of the English reader. The Scottish reader, for whom no doubt it is primarily intended, will find in it a guide that is easy to read and understand, containing much practical advice and useful information.

"Taxation" Manual. Edited by Ronald Staples. London: Taxation Publishing Co., Ltd. Price 25s. net.

This is the eighth edition of a work stated on the title page to be compiled by barristers and experts, under the direction of the editor of "Taxation." The last previous edition came out nearly four years earlier, so that there have been three Finance Acts in the interval, and the Income Tax Act, 1952, has come into full force. The primary

object of the manual is to provide a ready means of access to the law of income tax and surtax, as they work in practice, and it is intended both for students and practitioners. It does not pretend to compare with major works, but within its own sphere it is complete and helpful. We have tested it at various points where the ordinary taxpayer (particularly the ordinary small taxpayer) finds himself puzzled, and have been impressed by its lucidity. Excess rents, back duty, and capital allowances for industrial buildings and machinery, are instances of the sort of thing we have in mind. As a desk book for constant reference the new edition, like its predecessors, can be recommended.

CORRESPONDENCE

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

ADOPTION APPLICATIONS

I was interested in the article on the hearing of adoption applications at p. 778, *ante*, in which your contributor suggests that the guardian *ad litem* should be required to give his report verbally in the presence of the applicants.

While not necessarily dissenting from the above I consider it relevant to draw attention to the Report of the Departmental Committee on the Adoption of Children (Cmd. 9248) in which, at para. 87, the following is stated:

"We have been informed by witnesses that in some courts the report of the guardian *ad litem* has been read out in front of the applicants. It is a confidential report to the court and should be treated as such. In our view the proper course is for the court to peruse the report before the hearing and at the hearing to make such observations and ask such questions as may be necessary in the light of the report."

Yours faithfully,
N. COLLINDRIDGE,
Children's Officer.

Children's Department,
Municipal Offices,
Hall Plain,
Great Yarmouth.

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

May I refer to P.P. 4 on p. 521 of your issue dated August 14, 1954.

In dealing with the question there raised with regard to the submission of no case by a husband's advocate at the conclusion of the evidence called for a wife, and whether the husband should be put upon election, you stated: "We consider it doubtful whether cases on election apply to summary proceedings."

A similar point recently arose in domestic proceedings before my magistrates.

The husband's counsel intimated that he proposed to make a submission of no case to answer, whereupon counsel for the wife stated: "I put you upon election."

I replied, and I quote from the notes subsequently supplied on the hearing of the appeal:

"There is no considerable doubt whether the practice of the Divorce Court in this matter ought to be followed, in view of the Magistrates' Courts Rules, 1952, and in any event it is a matter for the court to decide whether to put the defendant's solicitor upon his election. There was an article upon this in the *Justice of the Peace* last year for which I will send. It is not the practice in this court for their worships to put you upon election in these circumstances" (P.P. 4, p. 521, *Justice of the Peace and Local Government Review*, August 14, 1954, was subsequently made available to the court by the clerk).

The court did not put the husband upon his election.

The case went to appeal, not upon this particular issue, but I thought it wise to make a full reference to the point in the hope that a definite ruling might be given.

It was in somewhat emphatic terms.

I am told by counsel who attended the hearing that when this particular passage was reached the learned President said: "How can he get that? Over and over again this court has ruled that the justices must put the defendant to his election. It is their duty to make him elect."

The court went on to dismiss the appeal on the grounds that there was ample evidence to support the magistrates' findings.

The case was *Henry* v. *Henry* heard early in November, and has so far not been reported.

It would appear that the procedure of election applies to domestic proceedings before magistrates and that the court has a definite duty to put a husband upon his election.

Yours faithfully,
R. KENNETH COOKE,
Clerk to the Prescot and St. Helens (County) Magistrates.

10 Derby Street,
Prescot, Lancs.

ADDITIONS TO COMMISSIONS

LIBERTY OF PETERBOROUGH

John Robert Topham-Haynes, Westholme, 58, Hodney Road, Eye, nr. Peterborough.

MONMOUTH COUNTY

Edward Connor Lysaght, The Conagar, Llandogo, Mon.

NORTHUMBERLAND COUNTY

Mrs. Nancy Lawrence Morse, 66, Elmfield Road, Gosforth, Newcastle/Tyne, 3.

YORKS (WEST RIDING)

Miss Margaret Armitage, The Elms, Farrer Lane, Oulton, nr. Leeds.
Arthur Barker, 26, Woodlands, Todmorden.
William Edward Batley, Grange Farm, Billingley, nr. Barnsley.
James William Bedford, 2, Park End Road, Goldthorpe, nr. Rotherham.
Mrs. Marjory Kathleen Bolton, 16, Springfield Road, Baildon.
Ernest Buckley, Sunny Mount, Nicker Brow, Dobcross, nr. Oldham.
Mrs. Kathleen Cleghorn, Manor House, Roecliffe, nr. Boroughbridge.
Arnold Dilkes, 16, Oak Road, Wath on Dearne, nr. Rotherham.
Reginald Hainsworth, Sunnydale, Ingleton, via Carnforth.
Jack Hood, 180, Oldham Road, Grasscroft Road, nr. Oldham.
Frank Hudson, 44, Summerfield Avenue, Bailiff Bridge, Brighouse.
Wilfred Hullah, 9, West View, Littlethorpe, Ripon.
Miss Mary Rebekah Lord, Hodder View, Higher Hodder, nr. Clitheroe, Lancs.
Maurice Edric Midgley, The Pharmacy, Station Road, Burley-in-Wharfedale.
Richard Moore, Mainsfield, Giggleswick, Settle.
Mrs. Gertrude Mary Nutter, Friar House, Wentworth, nr. Rotherham.
Alan Edward Pease, The Breck, Triangle, nr. Halifax.
Clifford Norman Ratcliffe, Tusculum, Golden Smithies Lane, Wath on Dearne, nr. Mexborough.
Mrs. Mary Elizabeth Senior, 130, Wood Lane, Rothwell, Leeds.
Mrs. Hilda Alice Shepherd, 20, Church Close, Kiveton Park, nr. Sheffield.
Ben Shooter, 18, Castle Avenue, Rastrick, Brighouse.
Thomas Barker Sutcliffe, Belvedere, Savile Road, Hebden Bridge.
Samuel Barstow Tattersall, Elandene, Victoria Road, Elland.
Jack Tunnicliffe, Parkhurst, Lower Park Drive, Kebroyd, Triangle, Halifax.
Gordon Waddilove, Westwood, Staveley Road, Shipley.
Mrs. Mabel Wilson, Wellfield House West, Todmorden.
Mrs. Amy Alberta Woodyatt, 6, John Street, Little Houghton, nr. Barnsley.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF COMMONS

Tuesday, December 13

FINANCE BILL, read 3a.

Friday, December 16

CHILDREN AND YOUNG PERSONS BILL, read 3a.

ON TIME

The opening of the new Calendar Year inevitably gives rise to reflexions of a *quasi-philosophical* kind. It is of the nature of man, both in primitive and civilized communities, when he applies his mind to the problems of life, to invent and find names for concepts and ideas, even when he feels them to be beyond his understanding, and to attribute to these abstractions of his own devizing a real existence, and a power of control over his actions, which it seldom occurs to him thereafter to doubt. One of these abstractions is that of Time—a mysterious concept, beginningless and endless—an infinity to which human beings apply the supreme absurdity of division and sub-division into finite periods. This inconsistency is to some extent recognized by the modern distinction between astronomical time, measured (if that be the appropriate expression) in " light-years "; geological time, the years of which run into millions, and recorded time, as known to archaeologists and historians, which goes back a mere 15,000 years or so. Recorded time, whether based upon the commencement of the Christian era, or the traditional Hebrew date of the Creation (3761 B.C.), from the Hegira of the Prophet Mohammed in 622 A.D., or from the Enlightenment of Buddha, now nearly 2,500 years ago, is but a flash in comparison with the untold aeons which the scientists tell us is the age of the Universe.

Arbitrary as they may be, the finite divisions instituted by the peoples of the ancient and modern world exhibit a certain regularity and have their recognized uses for the practical purposes of life. The solar year, the summer and winter solstice, the waxing and waning of the moon, sunrise and sunset, provide, as it were, six points by which mankind have calculated their years, months and days. Periodically the accuracy of the method is called in question; reform of the Calendar has given rise to many controversies in the course of history. In this country the Calendar (New Style) Act of 1750, which eliminated the 11 days between the 2nd and 14th of September, 1752, produced protests and even riots among the ignorant who felt that their lives were somehow being shortened by the innovation.

Such minute adjustments pale into insignificance in face of modern conceptions of a " space-time continuum "—a sort of fourth dimension—which (the mathematicians tell us) has been, is, and always will be, about and around us; it is we who move and travel through this permanent medium, and not time that " flies " or " runs " or " passes " on its way. This new idea is a difficult one to grasp, for every language is so full of simile and metaphor which emphasize the older notion of something fluid and ever moving coming to meet us, and passing us by. He would be a bold man who would attempt an anthology of such literary references in the English tongue alone; some day, perhaps, poetry will yield to higher mathematics, and the imagery of the flowing river, the ever-rolling stream, the moving finger, the flying hour, the revolving wheel, and all the rest of it will be forgotten and absorbed in the mystic jargon of Einsteinian relativity.

Meanwhile the practical day-to-day work of human life will continue to be measured in seconds, minutes and hours by the relentless hands on the clock-face. Punctuality will remain a necessity to most of us, and those who affect an indifference to its demands will get short shrift from their fellows. Philosophers may insist upon the artificiality of the convention, but when today closes at midnight and 1956 begins to dawn, the vast majority will feel that a new chapter in their lives has opened.

A pleasing combination of the practical and the theoretical concepts of time has recently been achieved in Copenhagen. In the Town Hall of that delightful city, King Frederik of Denmark has started a new " World Clock," which has been described as the Eighth Wonder of the World. It was designed by the astronomical instrument-maker Jens Olsen, who died in 1945, and has been completed by his successors. It contains upwards of 15,000 hand-made parts and 445 cogwheels. The slowest-turning wheel, which measures the equinoxes, would have taken 26,000 years to complete one single revolution and for that reason only one quarter of this wheel has been incorporated—enough for 6,000 years. The clock shows Greenwich Mean Time and regional time elsewhere, and also Star Time for various latitudes; it indicates the phases of the moon, the date of solar and lunar eclipses and the places where they will be visible, the dates of the moveable feasts, and the day of the week on which any date will fall within the next 40 centuries. It also incorporates a calendar for the year 570,000, which should be long enough for anybody. It is said that the clock will lose only one second in a thousand years, a claim difficult to substantiate, but still more difficult to disprove. Six minutes before midnight on New Year's Eve (there is something vaguely unsatisfactory about those six minutes) it will chime to remind its observers of the coming change and its " Festival Calendar " will tick over as 1956 begins. With such a paragon among clocks the worthy citizens of Copenhagen will get the best of both worlds; its movements will presumably be broadcast, and those who set their watches by Olsen Time will have no excuse for being late for such mundane matters as catching trains and keeping luncheon appointments, while those who dwell in the serene and rarified atmosphere of the higher mathematics will be enabled to take a long-term view by setting themselves to check the day on which Easter will fall in the year 571,956 A.D. The only trouble (as happens with masterpieces constructed with similar ingenuity elsewhere) is that it may prove difficult, if not impossible, for the ordinary man who glances at the Clock face, to tell the time.

A.L.P.

PERSONALIA

RETIREMENTS

Mr. Charles Brampton, deputy town clerk of Lambeth metropolitan borough council since 1949, is to retire in March, next.

Mr. Tom Millward Elias, clerk to Birmingham city justices since 1944, will retire next March after 35 years at the Victoria Law Courts. Mr. Elias was admitted in May, 1911.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Adoption—*Notice to welfare authority—Effect of change of address of applicant.*

The applicants for an adoption order, at the time when they were considering the order and had the child in their custody, resided outside the jurisdiction of this court and in accordance with s. 2 (6) (*b*) of the Adoption Act, 1950, notified the welfare authority for the area in which they then resided.

Subsequent to that notification they changed their residence to within the jurisdiction of this court and they contend that having complied with s. 2 (6) (*b*) in the area in which they then resided there is no necessity for a further three months' notice to be given to the welfare authority of this area and that an adoption order can be made after three months from the original notification.

I can find no authority for or against this contention and should appreciate your opinion. TOPEN.

Answer.

The applicants complied with the section by giving notice to the welfare authority where they were for the time being residing, and in our opinion the court is not precluded from making an order by reason of the removal of the applicants into another area. If the court is not satisfied that sufficient inquiries have been made it can adjourn the hearing and ask the new welfare authority to report.

2.—Contract—*Stipulation for increase caused by subsequent enactments—Increased outgoings not so caused.*

A local authority entered into a contract in 1950 for the construction of sewers and works incidental thereto. The agreement incorporated the general conditions of contract for use in connexion with works of civil engineering construction (edition dated January, 1950) and included a revision to this second edition of the same date.

Clause III of this revision reads as follows:

"If any statute or statutory instrument shall after the date of tender be formally applied to the contract or become compulsorily applicable thereto, the employer will reimburse to the contractor the net extra cost of the works occasioned by compliance with such statute or statutory instrument over and above the cost of carrying out the work under the working rule agreement of the Civil Engineering Construction Conciliation Board."

Rates for the use of excavating plant were not included in the schedule of materials annexed to the bill of quantities and it was nowhere specified that such plant should be used. The use of such machines was, nevertheless, accepted as being a normal and business-like thing to do. The contractors notified the council in the course of the contract of the publication of S.R. & O. 2060 (1950) (Control of Rates of Hire of Plant Order) and that it was their intention to claim the extra costs involved. This letter was acknowledged without stating either acceptance or non-acceptance of any claim for reimbursement.

The opinion has been expressed that, since the S.R. & O. referred to merely fixes maximum rates of hire, the contractor would still have complied with it even had the original lower rates been adhered to, and that the above quoted clause III therefore does not place the council under any legal liability to meet increased costs of plant hire.

Please state whether in your opinion the contractor is in a position to enforce a claim against the council for increased costs of plant hire. ABDUL.

Answer.

We think not, for the reason suggested near the end of the query. We accept the proposition that the contractor was entitled to use the machines, and to obtain them on hire. Conceivably he had to pay a higher price for hiring them than he had foreseen when tendering, but this arose from the course of business and not from the statutory instrument.

3.—Highways—*Breaking open—Non-statutory company.*

The corporation receive requests from time to time from private persons and companies not possessing statutory powers to break open streets, for permission to interfere with or break open streets for various purposes such as cable laying, drainage, and the like. The corporation is concerned about liability in the event of damage or injury caused to third persons using the highway during the course of such work, or by reason of depression in the surface when settlement takes place after reinstatement works have been carried out, or by reason of bad reinstatement being made. Reinstatement works are not carried out by the corporation.

Although part II of the Public Health Acts Amendment Act, 1907, is in force in the borough and presumably s. 29 covers consents given by the corporation, the common law doctrine is that it is a nuisance to make an opening in the highway and that no consent by the highway authority will legalize it: *A.-G.* v. *Barker* (1900) 83 L.T. 245.

I should be glad of your opinion on the following points:

1. Is it a correct interpretation to say that s. 29 authorizes the opening of streets by non-statutory companies or persons?

2. If so, would the corporation by giving consent thereunder be involved (by reason of their duty to maintain streets or otherwise) or be accountable to any third person in the circumstances outlined above?

3. Is it desirable for the corporation when giving consent to insist on the non-statutory company (*a*) taking out insurance to cover liability, (*b*) giving an indemnity to the corporation?

4. Would it make any difference if reinstatement or other works are expressed to be "to the satisfaction of the corporation"?

5. Generally as to the position.

PINTO.

Answer.

1. The owner of the soil of a highway repairable by the inhabitants at large has no right to break it open except with the consent of the highway authority; *see Goodson* v. *Richardson* (1874) 30 L.T. 142, and no other person may do so except with the consent of both the owner of the soil and the highway authority except under statutory powers; *see ibid.* The highway authority may give consent under s. 29 of the Act of 1907 to the owners of the soil or to another person if that person has the owner's consent.

2. No, in our opinion.

3. No, in our opinion. A warning, however, should be given to the company as to their liability.

4. No, in our opinion. Such reinstatement must be to their satisfaction in any case.

5. The highway authority may be liable if they reinstate on default of the person breaking open, if they are negligent in the actual reinstatement.

4.—Highways—*Use of highway cleansing machine on footpath.*

Can you please say whether it would be an offence to use a mechanically-driven street cleansing machine on the pavements of a road or street, such a machine carrying out a cleansing operation (*e.g.*, snow clearing or ordinary scavenging) automatically and being under the control of a workman in the same manner as a motor mower or auto-scythe? It is not clear whether such a machine would come within the ambit of s. 72 of the Highway Act, 1835, but it is believed that motor mowers may properly be used on the grass verges forming part of the footpath pavement of highways, provided the machine and the operator are duly licensed. It may be, of course, that in using a mechanically-propelled machine for snow clearing the surveyor is fully covered by the direction contained in s. 26 of the 1835 Act, the means merely being the outcome of modern development.

JURDEN.

Answer.

From the description of the machine it does not appear to be a carriage, and we do not think there is an offence against s. 72 of the Highway Act, 1835. Neither do we think the case falls within s. 14 of the Road Traffic Act, 1930, the pavement not being a "road being a bridleway or footway."

5.—Husband and Wife—*Maintenance order—Husband domiciled in Scotland—Maintenance Orders Act, 1950, ss. 1 and 27.*

Is it quite clear that a woman residing in England can take proceedings in a court in England against her husband under s. 4 of the Summary Jurisdiction (Married Women) Act, 1895, provided that the parties last ordinarily resided together as man and wife in England if the husband is a Scotsman domiciled in Scotland?

SONOR.

Answer.

In our opinion, yes, especially having regard to s. 27 (2) of the Act.

6.—Land Drainage—*Obstruction of watercourse erected after 1930 but not by present owner.*

The county council are exercising their powers under s. 50 of the Land Drainage Act, 1930, incorporating by reference s. 44 of the Act. The present owner of the land may contend that the obstruction was erected by his predecessor in title and that he had in no way added to or altered it. It is thought that he will not claim the erection

or alteration took place before the commencement of the Act. If his contention is correct, is it your view that the county council have any power to proceed against him?

AMBO.

Answer.

Unless the obstruction was erected before the commencement of the Act, in which case the person having power to remove it can be served as such, the council can only proceed under s. 44 (3) against the person who erected, raised, or altered it.

7.—Licensing—*Registered club on premises of magistrates' court situated outside its own petty sessional division—Registration with appropriate clerk.*

The courthouse of a county petty sessional division is situated in a county borough adjacent to, but not included in, the division. Lengthy sessions often make it necessary for the justices to take luncheon in the courthouse and for this purpose a luncheon club has been established. If the luncheon club were to be registered under s. 143 of the Licensing Act, 1923, and intoxicating liquor supplied by the club to its members, do you agree with my view that the room in which the club meets does not become licensed premises under the definition in s. 165 (2) and, therefore, the prohibition imposed by s. 157 would not apply?

I take it the club should be registered with the clerk to the justices for the county borough in which the courthouse is situated rather than the clerk for the petty sessional division in respect of which the courthouse is used.

N.C.J.B.

Answer.

We agree with our correspondent on all points:

(i) The room in which the club meets is not " licensed premises."

(ii) Section 157 of the Licensing Act, 1953, has no application in the case in point.

(iii) The club must be registered with the clerk to the justices acting for the petty sessions area in which the club premises are situated, *i.e.*, for the county borough (Licensing Act, 1953, s. 143 (2)).

8.—Local Government—*Local Government (Allowances to Members) Regulations, 1954—Meaning of " own private motor vehicle."*

Paragraph 2 of sch. 1 to these regulations lays down the rate for travel by a member's own private motor vehicle.

Difficulties have recently arisen as to what constitutes a " member's own private motor vehicle," and in view of the prosecutions which have been taken for infringement of these regulations I should be glad of your views. Three cases arise in which the vehicle is not the member's own property in the strict sense of the word, or registered in his own name, but where the car is under his control during the journey and where it seems not unreasonable that he should be paid in accordance with the scale laid down:

1. A member travels in a car which is owned by his father.

2. A member travels in a car which is owned by a limited company of which he is a director and principal shareholder.

3. A member (*e.g.*, commercial traveller) travels in a car which belongs to his employers and which he is entitled to use for his own private purposes, so that he suffers no expenses either directly or indirectly in making the journey.

A.R.B.

Answer.

By ordinary rules of construction each word in the enactment must be assumed to have a purpose, and the meaning attached to the word in ordinary speech. Applying this rudimentary test, we consider that not one of the vehicles mentioned can be treated as the member's own.

9.—Magistrates—*Practice and procedure—A summons as " judicial process "—Jurisdiction to be shown on the face of it.*

Is a summons issued against a defendant, directing his attendance before a court of summary jurisdiction, (*a*) judicial process and (*b*) must it show jurisdiction on its face? In dealing with the matter I invite your attention to *R.* v. *Nuneaton Justices* [1954] 3 All E.R. 251; 18 J.P. 524. A reference to decided cases will be appreciated.

TARO.

Answer.

Strouds Judicial Dictionary defines " process," *inter alia*, as the doing of something in a proceeding in a civil or criminal court. A summons is included in the definition of " process " in s. 8, Summary Jurisdiction (Process) Act, 1881.

A summons is a judicial process and it should show jurisdiction on the face of it. The form of summons (Form 2) Magistrates' Courts (Forms) Rules, 1952, provides for this to be done, and to complete this form the material facts from the information to show the nature, time and place of the offence and the date when the information was laid must appear in the summons, which is signed by the justice issuing it as a justice for a particular county or borough.

It has been held that a conviction must show jurisdiction on the face of it (*see* observations of Parke, B., in *Gossett* v. *Howard* (1845) 10 Q.B. 411), and that a conviction must follow the form of the information (*Edwards* v. *Jones* [1947] 1 All E.R. 830; 111 J.P. 324, *per* Lord Goddard, C.J., at p. 533. It follows that the summons, in reciting the relevant details from the information, should also show jurisdiction on the face of it.

If jurisdiction is not so shown but it does in fact exist its omission from the summons may be a defect in form covered by s. 100, Magistrates' Courts Act, 1952.

10.—Magistrates—*Practice and procedure—Magistrates' Courts Rules, rr. 14 and 75—Form of information and of summons—Separate trial of each information.*

I am uncertain as to the correct construction of r. 14, of the Magistrates' Courts Rules, 1952. Subsection (1) states that: A magistrates' court " shall not proceed to the trial of an information that charges more than one offence." Then subs. (2) provides " that nothing in this rule shall prohibit two or more informations being set out in one document." I take it this means that two entirely independent offences can be charged in one information provided they are set out separately. If this is so, the result would appear to be identical with the rules for the form of summons (*see* r. 75). If this is correct, why do the rules deliberately set out the regulations as to the form entirely differently.

S. INCONSISTENT.

Answer.

We do not think there is any essential difference in the requirements as to form. The basic requirement of r. 14 (1) is that each offence must be *tried* separately and individually.

This having been established, both r. 14 (2) and r. 75 (3) go on to provide, in effect, that notwithstanding this basic requirement that there shall be a separate trial it shall not be necessary to have each information and each offence set out on a separate piece of paper. Therefore, one document can be used for more than one information and similarly one " summons " can be used for more than one offence. In both cases the various informations and offences must be separately stated, *i.e.*, it must be made clear by the form of the document that although one piece of paper is being used the informations and offences are separate and distinct.

11.—Probation—*Further offence by probationer—Probation officer reluctant to lay information.*

X is placed on probation at the Blankville quarter sessions. Supervision is carried out by the probation officer in another English county as the probationer is by then resident there. X commits a further offence and has been sentenced by that other county's quarter sessions to imprisonment—where he now is—for the latest offence. The supervising officer appears reluctant to lay information regarding the failure to keep the terms of the Blankville probation order. The Blankville quarter sessions will desire to have the offender brought before them for such failure. What steps, and by whom, can be taken to ensure his being brought from prison to the Blankville quarter sessions for the failure to keep the terms of the probation order made in his case?

SALLER II.

Answer.

In our opinion either the police or the probation officer should lay information under s. 8 of the Criminal Justice Act, 1948. It seems to us that if the probation officer who is exercising supervision knows that the court which made the order desires to deal further with the probationer, it is the duty of the probation officer to lay information unless the police are doing so. The procedure for getting him before the quarter sessions is laid down in s. 8.

12.—Probation—*One order in respect of several offences.*

The local practice where a defendant has been found guilty of two or more offences and placed on probation has been to draw one order in which are set out separately each offence of which the defendant has been found guilty. Where, subsequently, because of a breach of a requirement or the commission of a further offence the defendant is dealt with, other than by a fine for breach of requirement, he is given a sentence for each of the offences set out in the probation order.

It has been suggested that this practice is wrong and that an order should be drawn in respect of each offence, otherwise on enforcement a sentence can only be imposed in respect of the first offence mentioned in the order.

I shall be pleased to have your opinion as to whether it is necessary to draw a separate order for each offence, with the authority, if any, for doing so, and whether you agree that where two or more offences are mentioned in an order on enforcement sentence can only be imposed in respect of the first mentioned offence.

TURSEY.

Answer.

Although an information, and consequentially a conviction, must be for one offence only in summary proceedings, we know of no authority for holding that a probation order must be for one offence only. So long as each offence is set out separately in the order and the effect explained to the defendant, we think one order is sufficient and in subsequent proceedings there could be a sentence for each offence.

13.—Railways—*Obstructing officer—Whether warning necessary before prosecution.*

A part of my division is a heavy industrial area and railway lines run from a number of works alongside the roadway. On certain occasions, especially when large crowds are assembled at football matches, obstruction is caused on the railway lines by motorists leaving their cars off the road, and on the railway tracks, with the result that engine drivers are unable to carry out shunting operations.

Section 16 of the Railway Regulation Act, 1840, states: "Any person wilfully obstructing or impeding an officer or agent of any railway company in the execution of his duty upon any railway, or in or upon any station or premises connected therewith, or wilfully trespassing," (*n*), etc. The footnote (*n*), part 3, on p. 1985, *Stone*, 1955, states that "no person shall be subject to a penalty under this section, unless it shall be proved to the court that public warning has been given to persons not to trespass, etc." There appears to be a division of opinion as to whether the footnote refers to the whole of the section, *i.e.*, obstruction, and trespassing, or whether it refers to trespassing only.

Perhaps you would be kind enough to let me have your valued opinion on this point.

SOULEF.

Answer.

The footnote (*n*) on p. 1985 of the 1955 edition of *Stone* is not an explanation of, or in any way a modification of s. 16 of the Railway Regulation Act, 1840. It merely points out that additional powers for dealing with trespassers are contained in s. 55 of the British Transport Commission Act, 1949 (a private Act) and proceeds to quote that section in full. Subsection (3) provides that no penalty shall be recoverable under *that section* unless public warning has been given as prescribed.

Section 16 of the Railway Regulation Act, 1840, remains unaffected and persons obstructing or impeding an officer or agent, or wilfully trespassing and refusing to quit, can be dealt with under that section whether or not public warning has been given.

14.—Road Traffic Acts—*Insurance—Cover note—No specific reference to exclusion of person who does not hold a driving licence—Policy and certificate when issued have such a clause—Is unlicensed driver protected by the cover note?*

A question has arisen which has caused considerable divergence of opinion, in connexion with the validity of insurance covering motor vehicles when used on a public highway. A case in point is as follows:

A was stopped by a police officer when riding a power-assisted pedal cycle and asked to produce his driving licence and certificate of insurance. He was unable to do so, but elected to produce the documents at a police station in another police district. Some five days later he produced to the police a cover note which covered him for third party risks, on the day he was seen riding the machine. He also produced a provisional driving licence issued on the day *after* he was stopped by the police.

He was subsequently seen by the police officer who had seen him riding the machine, and he then produced a full certificate of insurance —dated from the commencement date of the cover note—which had been delivered to him after he had produced the cover note to the police. This certificate did cover him on the date he was seen riding the machine, but under an exclusion clause it stated: "Provided that he (the policy holder) holds a licence to drive the vehicle, or has held and is not disqualified from holding or obtaining such a licence." The cover note produced did not show such a clause, but merely stated that it was issued in accordance with the requirements of the Road Traffic Act, 1930.

The point at issue is:

(*a*) Whether the man was covered by insurance when first seen, although not in possession of a driving licence, and had never had a driving licence, by virtue of the fact that the cover note issued to him had no exclusion clause or clauses.

(*b*) In spite of the fact that no exclusion clause was shown, but that subsequently the full certificate of insurance did contain the exclusion clause, he was uninsured at the time he was first seen by the police.

I have a strong bias to (*a*) and contend that the full certificate of insurance cannot be effective until delivered by the insurer to the insured—*see* Road Traffic Act, 1930, s. 36 (5), and that, as no exclusion clause was shown on the cover note, the man was covered for third party risks.

JOLLO.

Answer.

We answered a similar question at 116 J.P.N. 770, P.P. 7. On the authority of the case there cited we think that it is the policy itself that must be looked to to ascertain what cover is given and to whom. Therefore A was not covered by insurance on the day he was stopped.

15.—Road Traffic Acts—*Insurance—Cover note—No specific reference to exclusion of unlicensed driver—Is such a driver protected by the cover note when the policy contains such an exclusion clause?*

In the answer to my query above I note that you quote the case *Spraggon* v. *Dominions Insurance Co.* (1940) 67 Ll.L.R. 529; (1941) 69 Ll.L.R. 1; 116 J.P.N. 770, P.P. 7, which I had read and took into consideration, but in that case it states "that the policy is the only document creating any liability on the insurers and that the certificate cannot affect in any way the limitations contained in the policy."

It is not for me to question a decision of any court, but as a layman, I have only the wording of the Act and decided cases to consider and work upon, therefore, when s. 36 (5) of the Road Traffic Act, 1930, states: "A policy shall be of no effect for the purposes of this part of this Act unless and until there is delivered by the insurer to the person by whom the policy is effected a certificate (in this part of this Act referred to as a 'certificate of insurance') in the prescribed form *and containing such particulars of any conditions subject to which the policy is issued* and different particulars as may be prescribed in relation to different cases or circumstances"; and subs. (6) of the same section states: "In this part of this Act the expression 'policy of insurance' includes a *cover note*"—the only explanation that can be placed on such explicit wording is that a cover note is a policy and that *any condition or conditions* which are placed by the insurer on the insured *must be shown on the cover note*. The absence of any such condition or conditions must presuppose the insured person free from any restriction or condition when driving the motor vehicle named or shown on the cover note.

The question we have to decide is not whether there is any liability on the insurers in respect of any policy issued by them—this would appear to be a civil matter—but does the *cover note* issued by the insurers and produced by the insured cover that person to drive the motor vehicle. If no condition or conditions are shown, then, as far as s. 36 (5) of the Act is concerned, the law appears to be complied with, the natural presumption being that the person holding the cover note can drive the vehicle in question *with no restrictions or conditions imposed*; this, to my mind, *must apply* if s. 36 (6) is still in force.

Under the Motor Vehicles (Third Party Risks) Regulations, 1941, reg. 3, it stated "policy" means such policy of insurance in respect of third party risks arising out of the use of motor vehicles as complies with the requirements of part II of the Act *and includes a "cover note."* Here, once again, a "policy" is construed as a "cover note." In *Gray* v. *Blackmore*, 50 T.L.R. 23; 77 S.J. 765, it states: "If the policy does not comply with the requirements of this Act, the assured is liable to a penalty." Section 36 (6) informs us that a "policy" includes a "cover note," so it would appear from this Case Stated that a cover note *must* comply with the requirements of the Act, *i.e.*, particulars of any condition or conditions must be shown.

I should be grateful for any further opinion you may be able to give me on this matter.

JOLLO AGAIN.

Answer.

We have not had the advantage of seeing the cover note in question, but we have no reason to suppose that it does not follow the usual form of cover note issued by insurance companies. The usual form of wording is that the proposer is "held covered in terms of the company's usual form of——policy applicable thereto (*i.e.*, to the vehicle in question) for a period of —— days."

This wording imports into the cover note any conditions and exclusions contained in the company's normal type of policy appropriate to the vehicle, and warns the proposer as plainly as anything can that the cover note is issued subject to certain conditions. If he does not know what those conditions are he should ask. He cannot be allowed to take the attitude that he is not concerned to know what cover he is being given.

We are of opinion that unless the driver in question can show that the exclusion of unlicensed drivers is not a normal clause in the type of policy he asked for he was not covered by insurance on the day he was stopped.

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